


**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-086**

  
HSCS (retired)

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**FINAL DECISION**

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (“Board” or “BCMR”) according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. After receiving the completed application, the Chair docketed the case on October 25, 2022, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 30, 2026, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**OVERVIEW**

The applicant, a Senior Chief Health Services Technician (HSCS/E-8), was involuntarily retired from the Coast Guard with an honorable characterization of service on November 30, 2011, after 23 years, 8 months, and 24 days of active service. His retirement resulted from his selection by the Coast Guard’s 2010 Career Retention Screening Panel (CRSP). The 2010 CRSP was the first of five annual CRSPs the Coast Guard convened between 2010 and 2014 to select some retirement-eligible senior enlisted members for involuntary retirement in order to create advancement opportunities for junior personnel.

In June 2018, several members involuntarily retired via the 2012, 2013, and 2014 CRSPs filed suit in the U.S. Court of Federal Claims (CoFC), alleging that the CRSPs were unlawful and seeking backpay for the period between their involuntary retirements and the dates on which they would have completed 30 years of active service.<sup>1</sup> Eventually, all

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<sup>1</sup> At the time, all enlisted members with 10 or more years of active service who chose to reenlist did so for an “indefinite period of time ... up to a member’s 30-year active duty anniversary date.” *Coast Guard Personnel Manual*, COMDTINST M1000.6A § 1.G.2.a.2. (January 1988). Members with 20 or more years of active duty serving on indefinite enlistments were permitted to request voluntary retirement at any time. *Id.*, § 1.G.6.c.

members retired by the 2012–2014 CRSPs were certified as a plaintiff class. Members retired via the 2010 and 2011 CRSPs were not included in the class, as their claims were barred by CoFC’s six-year statute of limitations.

In July 2021, CoFC held that the CRSPs were unlawful, and the U.S. Court of Appeals for the Federal Circuit affirmed in March 2024. *Tippins v. United States*, 154 Fed. Cl. 373 (2021), *aff’d*, 93 F.4th 1370 (Fed. Cir. 2024). The case is now back before CoFC, where the parties are working to finalize the relief due to each member of the plaintiff class. *See Tippins v. United States*, No. 1:18-cv-00923 (Fed. Cl. filed June 27, 2018).

The applicant now seeks relief equivalent to that awarded in the *Tippins* litigation. He asks the Board to correct his military records by changing his retirement date to March 6, 2018, to reflect 30 years of service. This correction would, in turn, entitle the applicant to backpay for the approximately six-year period from that date back to his November 2011 retirement, potentially in addition to both retroactive and continuing increases in his retirement pay.

For the reasons discussed below, the Board finds that the application is untimely and that the interests of justice do not warrant waiving the Board’s three-year statute of limitations. Accordingly, the application is denied.

## SUMMARY OF THE RECORD

### *The Applicant’s Service*

The applicant entered on active duty in the Coast Guard on March 7, 1988. On December 3, 2003, he agreed to reenlistment for an indefinite period. On August 1, 2004, he was promoted to Chief Health Services Technician (HSC/E-7). He reached 20 years of active service on May 7, 2008. On September 1, 2011, he was promoted to HSCS/E-8, the rank he held at retirement.

The applicant’s personnel records reflect numerous positive achievements and awards. They also contain derogatory entries, including: counseling for tardiness and negative attitude; nonjudicial punishment for violation of Article 86 of the Uniform Code of Military Justice in 2000 for an 82-day unauthorized absence, resulting in reduction in grade and adverse evaluation marks; misuse of government computer systems by browsing inappropriate websites in 2001; and counseling for financial irresponsibility due to failure to pay just debts (government credit card balances) in January 2007, November 2007, and April 2008, for which he was placed on performance probation (successfully completed in January 2009).

*CRSP Process and Applicant's Retirement<sup>2</sup>*

On August 5, 2010, ALCOAST 408/10 announced that, due to historically high retention and decreased accessions resulting in slowed advancements and promotions, the Coast Guard would conduct a CRSP. The CRSP was described as a “workforce tool” intended to ensure a “vibrant and healthy workforce for the long term, one with consistent accession levels and steady advancement opportunities.” The message stated that the CRSP would review and recommend all members in the following categories for continued service or involuntary retirement:

- Members in paygrades E-6 and below with 20 or more years of active service as of September 1, 2010; and
- Members in paygrades E-7 and above with 20 or more years of active service and at least three years time-in-grade as of September 1, 2010.

ALCOAST 408/10 advised that the CRSP would use a “performance-based methodology” to determine which members would be retained on active duty.

In a memorandum dated August 13, 2010, the Commandant of the Coast Guard requested authorization from the Secretary of the U.S. Department of Homeland Security for an active duty enlisted CRSP to be conducted in the fall of 2010. The Commandant explained that high retention among senior enlisted personnel, combined with relatively lower retention among junior personnel, was adversely affecting “workforce flow” and, if left unaddressed, would result in an imbalance in the enlisted workforce’s experience level for many years. The Commandant further explained that the CRSP would review only senior enlisted members with 20 or more years of service, all of whom would be entitled to full retirement benefits if selected for involuntary retirement. The memorandum identified 10 U.S.C. § 1169 and 14 U.S.C. § 357(j) as the legal authorities supporting the CRSP and advised that § 357(j) required the Secretary’s authorization to conduct involuntary retirements without the action of an internal board.

The Secretary subsequently approved the Commandant’s request, thereby authorizing the 2010 CRSP.

On August 19, 2010, ALCGENL 140/10 provided additional details to members who met the CRSP criteria. The message reiterated the eligibility criteria stated in

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<sup>2</sup> The Coast Guard has provided the Board with various documents associated with the CRSP convened in 2011, but the Board’s review suggests the applicant was selected by the CRSP convened in 2010. For example, the applicant submitted his request for a November 2011 retirement date in January 2011, and the 2011 CRSP did not convene until August 2011. The Board notes this discrepancy but declines to pause adjudication to seek additional material from the Coast Guard, as all of the documents discussed herein were previously published by the Coast Guard or are otherwise publicly available. In addition, the Board is not aware of any material difference between the procedures used by the 2010 and 2011 CRSPs that would have a bearing on the outcome of this case.

ALCOAST 408/10 and advised that the CRSP would consist of a mix of senior officers and senior enlisted members. Approximately 1,300 members, or 3.8 percent of the enlisted workforce, met the criteria for consideration. The message stated that no minimum number of members to be selected for involuntary retirement had been established. It further explained that the procedures would require agreement by at least two-thirds of the panel to recommend a candidate for involuntary retirement. The message also advised that members could communicate with the CRSP via a standard memorandum of not more than two pages, focused on mitigating information specific to instances of substandard performance or unsatisfactory conduct documented in their records.

On September 21, 2010, ALCOAST 464/10 announced that the CRSP would convene at the Coast Guard Personnel Service Center on September 27, 2010. The message then provided further details regarding the performance and conduct criteria the CRSP would employ, stating as follows:

DOCUMENTED MISCONDUCT AND SUBSTANDARD OR MARGINAL PERFORMANCE ARE THE PRIMARY REASONS CRSP ELIGIBLE CANDIDATES WILL BE CONSIDERED FOR INVOLUNTARILY RETIREMENT.... THE FOCUS WILL BE PERFORMANCE WITHIN THE LAST FIVE YEARS, OR SINCE THE MEMBER'S ADVANCEMENT TO THEIR CURRENT GRADE (E5/E6/E7/E8/E9), WHICHEVER TIMEFRAME IS LONGER (E.G. IF A MEMBER WAS ADVANCED TO THEIR CURRENT RANK SEVEN YEARS AGO, THE LAST SEVEN YEARS OF PERFORMANCE WILL BE REVIEWED. IF THE MEMBER ADVANCED ONE YEAR AGO, THE LAST FIVE YEARS OF PERFORMANCE WILL BE REVIEWED.).

THE FACTORS LISTED BELOW WILL INDICATE TO THE PANEL THAT AN INDIVIDUAL MAY NOT MEET THE PERFORMANCE REQUIREMENTS FOR CONTINUATION. THE PANEL MAY CONSIDER THESE FACTORS WITH THE ENTIRE OFFICIAL MILITARY PERSONNEL DATA RECORD TO SELECT FOR CONTINUATION THOSE SHIPMATES WHOSE SERVICE IS CONSIDERED TO BE IN THE BEST INTEREST OF THE COAST GUARD. WHILE THIS LIST IS NOT ALL INCLUSIVE, IT PROVIDES THE PERFORMANCE INDICATORS THE PANEL WILL CONSIDER TO SELECT THOSE CRSP CANDIDATES FOR INVOLUNTARY RETIREMENT:

- A. SUBSTANDARD PERFORMANCE OF DUTY TO INCLUDE RECEIPT OF A NOT RECOMMENDED FOR ADVANCEMENT BASED ON AN UNSATISFACTORY CONDUCT MARK OR DECLINING PERFORMANCE WITH THE SAME APPROVING OFFICIAL IN THE RATING CHAIN.
- B. RECEIPT OF AN ENLISTED EVALUATION REPORT (EER) WITH A MINIMUM AVERAGE CHARACTERISTIC MARKS OF 3.5 OR BELOW.
- C. MORAL OR PROFESSIONAL DERELICTION, SUCH AS RELIEF FOR CAUSE.
- D. FAILURE TO MEET SERVICE NORMS OR REGULATIONS CONCERNING ALCOHOL USE AND BODY FAT STANDARDS.
- E. DOCUMENTED MISCONDUCT INVOLVING VIOLATION OF THE UCMJ, E.G., NON-JUDICIAL PUNISHMENT, OR CONVICTION BY MILITARY COURT-MARTIAL/CONVICTION BY A CIVILIAN COURT.
- F. OTHER DOCUMENTED ADVERSE INFORMATION CLEARLY INDICATING THE CRSP CANDIDATE'S CONTINUATION MAY BE INCONSISTENT WITH NATIONAL SECURITY INTEREST OR MAY OTHERWISE NOT BE IN THE BEST INTEREST OF THE COAST GUARD, SUCH AS LOSING ONE'S SECURITY CLEARANCE.
- G. FINANCIAL IRRESPONSIBILITY, SUCH AS FAILURE TO PAY JUST DEBTS OR A PATTERN OF GOVERNMENT CREDIT CARD DELINQUENCY, INCLUDING

REVOCATION OF THE GOVERNMENT CREDIT CARD DUE TO MISUSE OR FAILURE TO PAY OUTSTANDING BALANCE.

- H. A CANDIDATE ON PERFORMANCE PROBATION WHO DOES NOT DEMONSTRATE PROGRESS DURING THE PROBATIONARY PERIOD IN OVERCOMING THE DEFICIENCY.
- I. FAILURE TO DEMONSTRATE UPWARD MOBILITY BY NOT QUALIFYING OR PARTICIPATING IN THE SERVICE WIDE EXAM.

The CRSP convened on September 27, 2010, and reviewed the records of 1,181 candidates. Because the applicant, at the time, had been an HSC/E-7 since August 1, 2004, and had more than 20 years of active service, he was among the candidates considered. In total, 802 members were selected for retention and 377, including the applicant, for involuntary retirement.

On November 15, 2020, ALCGPSC 115/10 announced the CRSP results. Members selected for involuntary retirement were notified of the opportunity to submit an appeal within 15 days, limited to claims of material error, newly discovered evidence, or improper documents in the member's personnel record. The message advised that involuntary retirements recommended by the CRSP would be effective between September 1, 2011, and December 1, 2011, and stated that members could submit a waiver request if seeking a later retirement date.

In a June 2025 submission to the Board (discussed further below), the applicant stated that he submitted a timely appeal of the CRSP's involuntary retirement recommendation to the Coast Guard, which was denied. No documentation of the appeal has been submitted to the Board.

The applicant was involuntarily retired effective November 30, 2011, with an honorable characterization of service, after serving on active duty for 23 years, 8 months, and 24 days.

The Coast Guard conducted additional CRSPs in 2011, 2012, 2013, and 2014 pursuant to authorization requests from the Commandant that were approved by the Secretary. The processes used in those years were substantially similar to the 2010 CRSP. In total, 832 senior enlisted members were selected for involuntary retirement (377 in 2010, 55 in 2011, 147 in 2012, 194 in 2013, and 59 in 2014).

In early 2015, ALCOAST 056/15 announced that the Coast Guard would not seek authorization for or conduct an active duty CRSP in 2015.

### *Tippins Litigation*

In June 2018, members involuntarily retired via the 2012, 2013, and 2014 CRSPs filed a lawsuit in CoFC, challenging the legality of the CRSPs and seeking backpay and

new retirement dates reflecting 30 years of service under the Tucker Act, 28 U.S.C. § 1491, and the Military Pay Act, 37 U.S.C. § 204. The court ultimately certified a plaintiff class, and 244 retired members opted in. Members involuntarily retired via the 2010 and 2011 CRSPs were not included in the class because their claims were barred by the six-year statute of limitations applicable to CoFC actions. *See* 28 U.S.C. § 2501.

At the time of the CRSPs, 14 U.S.C. § 357 authorized the Commandant to convene Enlisted Personnel Boards (EPBs) to recommend involuntary retirement of enlisted personnel with at least 20 years of service and prescribed procedures and standards for such boards. *See* 14 U.S.C. § 357(a)–(h). Among other things, the statute afforded members 60 days of notice, the right to appear before the EPB, 60 days to submit an appeal, and the right to legal counsel throughout the process. Section 357(j), however, provided an exception, stating: “When the Secretary orders a reduction in force, enlisted personnel may be involuntarily separated from the service without the [EPB]’s action.”

In the *Tippins* litigation, the plaintiffs argued that the CRSPs did not fall within the meaning of a “reduction in force” (RIF) under § 357(j) and therefore could not lawfully bypass the EPB procedures under § 357(a)–(h). As such, they argued, the CRSPs were unlawful, and their involuntary retirements invalid.

In a July 6, 2021, decision, CoFC held that the CRSPs were unlawful, concluding that the term “reduction in force” in § 357(j) was unambiguous and referred to the “elimination of positions or jobs, not merely the separation of personnel.” *Tippins v. United States*, 154 Fed. Cl. 373, 378 (2021). The court subsequently denied the government’s motion for reconsideration. *Tippins v. United States*, 157 Fed. Cl. 284 (2021). On appeal, the U.S. Court of Appeals for the Federal Circuit affirmed, holding that § 357(j) “[did] not include actions to separate current occupants from their positions simply to make room for others to be installed in the positions instead.” *Tippins v. United States*, 93 F.4th 1370, 1374–75 (Fed. Cir. 2024).

The Federal Circuit remanded the case to CoFC, which granted partial summary judgment in favor of the plaintiffs as to liability. A dispute then arose regarding the methodology to be used in determining the plaintiffs’ corrected retirement dates and resulting backpay. Specifically, the Coast Guard sought to retroactively apply high year tenure (HYT), a policy that sets maximum service limits for enlisted personnel based on rank, forcing separation or retirement if they fail to advance within a specific timeframe.<sup>3</sup> Retroactive application of HYT would have, in effect, limited any additional service (and therefore backpay and adjusted retirement pay) to be credited to most plaintiffs. In resolving this issue, CoFC found the Coast Guard’s proposed use of HYT too speculative, and held that under the “constructive service doctrine” developed in federal caselaw, the plaintiffs were entitled to new retirement dates reflecting completion of the indefinite

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<sup>3</sup> *See* Military Separations, COMDTINST 1000.4C, Ch. 6 (August 2024).

enlistment periods from which they were improperly separated, i.e., 30 years of service. *Tippins v. United States*, 176 Fed. Cl. 575 (2025).

At the time of this decision, the parties continue to file monthly joint status reports with CoFC detailing their efforts to calculate the monetary relief due to each plaintiff after accounting for offsets for income earned from other sources (e.g., civilian employment, military retirement annuities, veterans' benefits) during the relevant period, as required by law. See *Tippins v. United States*, Docket No. 1:18CV00923 (Fed. Cl. June 27, 2018).

### APPLICATION TO THE BOARD

In August 2022, the applicant submitted DD Form 149 (Application for Correction of Military Record) to the Board. Therein, he asked the Board to treat his separation under the 2010 CRSP as "illegal" and to grant him full reinstatement to active duty with all pay and benefits restored for the period in question.

As the basis for his request, the applicant cited the July 2021 decision in *Tippins* (the Federal Circuit's affirmance had not yet been issued). The applicant also asserted that his own record reflected only "minor infractions" over more than 23 years of service, and he stated it was his opinion that the Coast Guard used the CRSP process to force out higher-paid senior members in favor of less expensive junior personnel.

The applicant identified the date of the alleged error or injustice in his case as November 2011, corresponding to his involuntary retirement date, and the date of his discovery of the error or injustice as August 2022. To explain the discrepancy, he stated that his discovery was delayed due to his "lack of knowledge that the separation was illegal" and could be "attributed to the delays inherent in the legal system."

The only additional material included with the applicant's DD Form 149 was a copy of the July 2021 CoFC decision.

### VIEWS OF THE COAST GUARD

In March 2023, a Coast Guard Judge Advocate (JA) provided an advisory opinion recommending that the Board deny the application. The JA first noted that the Coast Guard's appeal of CoFC's decision in *Tippins* remained pending in the Federal Circuit.

The JA then argued that the application was untimely under the Board's three-year statute of limitations, and that the applicant had failed to show that it was in the interest of justice to excuse his delay. In particular, the JA observed that the relevant standard was when the applicant discovered or "reasonably should have discovered" the alleged error or injustice, and he stated that the applicant provided no justification for why he could not have consulted legal counsel or pursued relief in the 11 years since his retirement. In this

regard, the JA observed that other members had challenged the CRSP during this period in timely applications to the Board and in the *Tippins* case in CoFC.

Regarding the merits of the application, the JA noted that the application solely relied on the July 2021 CoFC decision, which was on appeal, and had addressed the 2012-2014 CRSPs, not the 2010 or 2011 CRSPs. Because the applicant relied solely on that decision and did not present evidence specific to his own case, the JA argued, he had failed to rebut the presumption of regularity afforded to the Coast Guard's actions or to otherwise prove error or injustice warranting relief.

The JA concluded, therefore, that the interests of justice did not warrant waiving the statute of limitations or granting relief.

### **MAY 2025 APPLICANT SUBMISSION**

In May 2025, the applicant submitted an additional DD Form 149, which he characterized as an amendment to his prior application. He explained that due to the status of his health, he would no longer qualify for reinstatement and no longer wanted to be considered for it.<sup>4</sup> Instead, stated, he wished to be “compensated for the lost time” remaining on his indefinite enlistment period at the time of his involuntary retirement – approximately six years and three months – including base pay and housing benefits, after subtracting what he received in retirement annuities during that period. The applicant attached a worksheet detailing his calculations, which resulted in a request for \$353,327.70. The applicant again emphasized that he was requesting this relief pursuant to the federal court decisions in *Tippins*.

### **SUPPLEMENTAL COAST GUARD SUBMISSION**

In June 2025, in response to a request from Board staff following the Federal Circuit's decision in *Tippins*, a Coast Guard JA submitted a supplemental advisory opinion. The JA initially noted that the Coast Guard had not sought review of the Federal Circuit's decision in the U.S. Supreme Court.

The JA then revised the Coast Guard's previous position and recommended that the Board grant the applicant's request for reinstatement to active duty, subject to his meeting all medical and other eligibility requirements. In this regard, the JA noted that the applicant's age was not a bar to reenlistment under current policy.

Regarding the applicant's request for retroactive service credit and backpay, the JA noted that the applicant had not provided any evidence showing how long he would have

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<sup>4</sup> The applicant explained in a later submission (discussed further below) that he was contacted by a member of the Coast Guard inquiring whether he was seeking reinstatement or only backpay. It appears the applicant's May 2025 submission of this additional DD Form 149 was in response to that inquiry.

remained on active duty after becoming retirement-eligible, had he not been selected by the CRSP. The JA stated that, without such evidence, the Coast Guard could not opine whether, or to what extent, constructive service credit and associated backpay would be appropriate. In this regard, the JA stated that if the applicant were to return to active duty or to submit additional evidence, the Coast Guard would concur in awarding an appropriate amount of constructive service credit.

### JUNE 2025 APPLICANT SUBMISSION

In June 2025, after receiving the Coast Guard's supplemental advisory opinion, the applicant submitted a letter in response.

Regarding reinstatement, the applicant stated that this was no longer a possibility given his loss of the use of one eye and other health issues. Regarding constructive service credit and backpay, the applicant refuted the Coast Guard's assertion that he had not submitted evidence addressing how long he would have remained in service if the CRSP had not been convened. Specifically, he questioned what evidence of this kind would consist of, and he stated that it would be reasonable to assume that he would have continued serving until his mandatory separation at 30 years.

Regarding timeliness, the applicant acknowledged that his submission was late but argued that the Coast Guard "should do the right thing" and should not "hide behind timelines and technicalities." He asserted that the Coast Guard had not informed the members selected by the CRSPs that their separations were unlawful, and the issue was only brought to light later by the *Tippins* case. Thus, he stated, he had assumed at the time of his separation that nothing improper had occurred.

The applicant also asserted that he had previously been informed by a Board staff attorney and an employee at the Coast Guard Pay and Personnel Center (PPC) that he was eligible for backpay similar to that being awarded to the *Tippins* plaintiffs. The applicant questioned why Board and PPC staff members would have told him this if he was not, in fact, eligible.

In addition, the applicant asserted that he had appealed his selection by the CRSP after his selection, but the appeal was denied.

In closing, the applicant asserted that the Coast Guard was attempting to perpetuate the injustice of his "illegal separation" and denial of back pay, and to "put the gloss of legitimacy" on that denial by framing it as his own failure to provide evidence. He further characterized the Coast Guard's position as consistent with a pattern of government agencies delaying servicemembers' benefits until they gave up or died.

### APPLICABLE LAW AND POLICY

At all times relevant to this case, 10 U.S.C. § 1169 provided that a regular enlisted member of the U.S. Armed Forces could not be discharged before his or her term of service expired, except:

- as prescribed by the Secretary concerned;
- by sentence of a general or special court-martial; or
- as otherwise provided by law.

At all times relevant, 14 U.S.C. § 357 governed the involuntary retirement of enlisted Coast Guard members with 20 or more years of active military service.

Section 357(a)–(h) authorized the Commandant to convene Enlisted Personnel Boards (EPBs) to review the records of enlisted members with at least 20 years of active service and to recommend members for involuntary retirement. Under § 357(b), such members could be considered for involuntary retirement when:

- the member’s performance fell below standards prescribed by the Commandant; or
- the member engaged in professional dereliction.

Section 357 afforded members being considered for involuntary retirement a series of procedural rights, including:

- written notice of the reasons the member was being considered for involuntary retirement;
- the right to be provided counsel;
- at least 60 days from the date counsel was provided to prepare and submit rebuttal materials;
- full access to records relevant to the consideration for involuntary retirement;
- the right to appear before the EPB and present witnesses or documentation; and
- 60 days to file an appeal.

Section 357(j) created an exception to the EPB process in the context of a reduction in force. It provided that: “When the Secretary orders a reduction in force, enlisted personnel may be involuntarily separated from the service without the Board’s action.”

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submission, and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The applicant has exhausted all available administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The applicant belatedly requested a hearing before the Board in his June 2025 submission. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs with that recommendation. *See Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

3. Under 33 C.F.R. § 52.24(b), the applicant bears the burden of proving an error or injustice by a preponderance of the evidence. The Board presumes the regularity of Coast Guard actions in the absence of evidence to the contrary. *See Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. Applications to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the error or injustice which underlies the application. 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22. The Board may excuse the untimeliness of an application if it determines that doing so would be in the “interest of justice.” 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22. In making that determination, the Board considers both “the reasons for the delay and the potential merits of the claim based on a cursory review.” *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). “[T]he longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits [must] be to justify a full review.” *Id.*

#### *Commencement of Limitations Period and Reasons for Delay*

5. The alleged error or injustice in this case is the applicant’s involuntary retirement as part of the 2010 CRSP, effective November 30, 2011. The application was filed in August 2022, nearly 11 years later.

6. The applicant argues that his application should be considered timely because he assumed that the Coast Guard’s actions in carrying out the 2010 CRSP were lawful and only “discovered” the error or injustice in his case when the federal courts found the overall CRSP system unlawful in *Tippins*. Alternatively, he argues that even if his application is considered untimely, the Board should waive untimeliness in the interest of justice, given his lack of awareness of an error or injustice prior to *Tippins* and the merits of his case.

7. The Board finds these arguments unpersuasive. The Board initially notes that it is well established that a party's lack of awareness of specific legal theories or potential claims does not, itself, act to toll or delay the running of a statute of limitations where the facts necessary to support the action are known. *See, e.g., Catawba Indian Tribe of South Carolina v. United States*, 982 F.2d 1564, 1570 (Fed. Cir. 1993); *Hupp v. Gray*, 500 F.2d 993, 996 (7th Cir. 1974).

8. The applicant knew in 2011 that he had been considered by the 2010 CRSP, selected for involuntary retirement, and separated from active duty. The CRSP process was described to members in contemporaneous communications. The authorities relied on by the Coast Guard were also communicated and were publicly available. Also readily accessible to members were the service's separation policies, including those detailing EPB procedures. *See Military Separations, COMDTINST M1000.4, Art. 1.C.10.c.* (September 2011). In short, the facts needed to support the applicant's current claim were known or discoverable by him with reasonable diligence at the time of his retirement. Indeed, the existence of the *Tippins* litigation demonstrates that the basis of the current application was discoverable within the Board's three-year limitations period.

9. The applicant has not contended that he considered his retirement erroneous or unjust and undertook steps to challenge it within three years but was prevented from doing so by unique or extraordinary circumstances. Instead, the record shows, the applicant remained on retired status and took no action for 11 years, effectively acquiescing to his retirement. It was only on learning that the *Tippins* plaintiffs, who timely pursued claims in CoFC, were likely to receive monetary awards, that he filed the present application. But while the *Tippins* decision(s) may have alerted the applicant to the legal merits of a potential claim, the underlying basis for the claim itself (i.e., the facts sufficient to support his request) was knowable or reasonably discoverable by him at the time of his separation from the Coast Guard, for the reasons discussed in the preceding paragraph.

10. As will be further discussed, the Board could not have granted the relief now requested by the applicant if he had filed a timely application. That is, it is only by virtue of the applicant's delay that the approximately six years and four months between his retirement and a hypothetical 30 years of service have passed and now form the basis of the relief he requests.

11. The Board briefly acknowledges that it previously denied a small number of timely applications from members retired via CRSP. *See* BCMR Docket Nos. 2011-130, 2013-153, 2014-233. Board decisions, however, are issued by three-member panels on the records before them in each case, and they are not precedential or binding on future panels. The existence of these decisions, therefore, did not preclude the applicant from seeking timely relief from the Board.

12. In sum, the record does not show that the applicant faced any particular obstacle in filing a timely application. The *Tippins* decisions alerted the applicant to the potential value of his time-barred CoFC claim, but the facts needed to make such a claim or to submit a Board application were known or knowable to him within the three-year period following his retirement. For these reasons, and based on the entire record, the Board concludes that the limitations period for filing a Board application commenced with the applicant's November 2011 retirement. In addition, the Board finds that the reasons for delay offered by the applicant are not so compelling as to weigh in favor of waiving the Board's statute of limitations.

*Cursory Review of Potential Merits*

13. Despite being untimely, the Board is required to perform a cursory review to consider the potential merits of the application in determining whether the interest of justice requires waiver of untimeliness in this case. For these purposes, the Board does not dispute the holding in *Tippins* that found the Department's interpretation of 10 U.S.C. § 357 (j) with respect to the 2012, 2013, and 2014 CRSPs to be erroneous. While the Department appears to have relied on the same interpretation for the 2010 and 2011 CRSPs, the Board notes that the *Tippins* decision did not address the 2010 or 2011 CRSPs. For the purposes of the analysis below, the Board will presume – in the light most favorable to the applicant's claim – that timely claims made to CoFC by potential litigants from the 2010 or 2011 CRSPs would have been adjudicated consistently with those of the *Tippins* plaintiffs.

14. The existence of an error or injustice, however, does not end the Board's inquiry or require that it grant the particular form of relief being requested. Under 10 U.S.C. § 1552(a), the Board may correct a military record only when it considers such correction "necessary to correct an error or remove an injustice." The Board's regulations likewise make clear that a two-step analysis is contemplated: (a) whether an error or injustice occurred, and (b) whether it is "necessary to change a military record to correct an error or remove an injustice." 33 C.F.R. § 52.12. These are two distinct determinations, and the Board's authority as to the latter has long been recognized as highly discretionary. *See Kreis v. Sec'y of Air Force*, 866 F.2d 1508, 1514 (D.C. Cir. 1989) (noting the Secretary may decline "to correct even an undisputed error or to remove even a conceded injustice ... [for example if] the alteration of a record may correct one injustice only to commit another, or perhaps [would] only ... incur some other equally significant institutional cost.... [S]uch determinations are well within [the Secretary's] discretion.").

15. Thus, to assess the application's potential merits, the Board must determine to what extent the relief requested by the applicant is "necessary to correct an error or remove an injustice" within the meaning of 10 U.S.C. § 1552(a). In making this determination, the Board will initially address two fundamental issues raised by this case related to the nature and scope of the Board's authority: (1) the relationship between relief

granted by BCMRs and CoFC; and (2) the limits on the Board's authority suggested by the derivative nature of such authority from the Secretary. The Board will then address the "constructive service doctrine" and any remaining issues.

*a. The Board is not a substitute for timely CoFC claims*

16. The Board exists to perform one statutory function: to correct military records of the Coast Guard when necessary. It does not adjudicate monetary claims under the Military Pay Act or determine the amounts to be paid as a result of record corrections. *See* 10 U.S.C. § 1552(c)(1); Comp. Gen. B-207299 (Oct. 6, 1982). CoFC, in contrast, is the forum designated by Congress to adjudicate most monetary claims against the United States. *See* 28 U.S.C. § 1491(a)(1). While CoFC may also order record corrections, such relief is expressly "incident of and collateral to" the monetary judgment. 28 U.S.C. § 1491(a)(2).

17. Congress chose a three-year statute of limitations for Board applications and six years for Tucker Act/Military Pay Act lawsuits in CoFC. Taken together, this structure indicates that Congress did not intend BCMRs to function as alternate fora for large, retroactive monetary awards extending beyond even CoFC's statute of limitations based on judicial decisions rendered after a potential litigant's claim had expired before that court.

18. The Board notes further that when it has waived its statute of limitations, the practical effect in most cases is to allow the Board to consider and, if appropriate, grant corrections that largely restore the applicant to the status he or she likely would have occupied at or near the time of the error. The Board is unaware of any case in which a waiver has been used to create a large, long-accruing monetary entitlement that arose only because the applicant delayed seeking relief for many years.

19. To emphasize this point, the Board observes that the only way it could grant the relief requested in this case (a new retirement date reflecting 30 years of service for a separation that occurred more than a decade ago) would be *because* of the application's lateness. Any resulting monetary award would have accrued over the extended period during which the applicant failed to seek relief in either available forum. Using the Board's waiver authority in this way would effectively circumvent the limitations periods established by Congress for both the Board and CoFC and would invite applicants to view the Board as an alternate venue for time-barred monetary claims.

20. In short, the *Tippins* plaintiffs timely pursued Military Pay Act claims in CoFC. The applicant did not do so, and the Board does not regard it as an injustice, in itself, that he may not receive the same relief. In class actions and other litigation, it is common for those who pursue timely claims to receive relief while those who do not are barred by statutes of limitations. The appropriate balance between the need to compensate injured

parties and other factors (e.g., prevention of the accumulation of damages over long periods, encouragement of prompt presentation of claims, and protection of defendants from the prejudice inherent in defending stale claims) is the purview of Congress, which has prescribed different statutes of limitations for the Board and CoFC. To waive untimeliness and grant the relief requested in this case would be to, in effect, create an end run around CoFC's jurisdiction by reviving an expired monetary claim.

*b. Limits on the Board's exercise of Secretarial authority*

21. The Board's authority is derivative of, and subject to, the Secretary's. Record corrections are "made by the Secretary acting through [the Board]." 10 U.S.C. § 1552(a)(2). Board actions must be "consistent with existing law and such directives as may be issued by the Secretary." 33 C.F.R. § 52.13(a). The Board may take final action on the Secretary's behalf only in certain categories of cases, and in all others – including those implicating "a significant issue of Coast Guard policy" – Board decisions are forwarded to the Secretary for approval, disapproval, or return for further consideration. 33 C.F.R. § 52.64. Federal courts have repeatedly emphasized that Congress vested final record correction authority in the service secretaries, not in correction boards themselves. *See, e.g., Boyd v. United States*, 207 Ct. Cl. 1, 8 (1975); *Strickland v. United States*, 423 F.3d 1335, 1340 (Fed. Cir. 2005); *Strand v. United States*, 951 F.3d 1347, 1354 (Fed. Cir. 2020).

22. During the period when the CRSPs were conducted, the Secretary explicitly approved the Commandant's annual requests to convene them, relying on 10 U.S.C. § 1169 and 14 U.S.C. § 357(j). At that time, no court had held that this understanding of the statutory scheme was erroneous. The CRSPs, therefore, were implemented based on the Department's understanding of federal law at that time.

23. As noted above, the Board previously considered and denied a small number of timely applications from CRSP-retired members who argued that the CRSPs were not lawful reductions in force under 14 U.S.C. § 357(j) (the position later credited in *Tippins*). In retrospect, however, it appears highly doubtful that the Board, acting under delegated authority, could properly have declared an ongoing, Secretary-approved personnel program unlawful, even had it been inclined to do so. More broadly, the Board's role is to adjudicate individual requests for correction of error or injustice, in a manner consistent with law and Secretarial directives. It is not designed, or empowered, to invalidate Secretary-approved programs or to act as the final arbiter of unsettled statutory interpretation questions with agency-wide impact. Those systemic questions properly fall to Congress, which enacts the laws, and to the federal courts, which authoritatively interpret them.

24. This case does not involve a clerical error or a failure to apply an existing Coast Guard policy as written. Rather, it arises from a Secretary-approved program affecting a large number of members, which was not held unlawful by any court until years

after the fact. Congress has recognized that systemic errors or injustices affecting groups of similarly situated members are more appropriately addressed at the Secretary level than through piecemeal, case-by-case Board decisions. *See* 10 U.S.C. § 1552(b) (authorizing the Secretary to submit a request for correction to the Board “on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice”). Consistent with that framework, the Board has rarely granted relief where a Secretary-approved policy affecting many members is at issue, and when it has done so, it has been at the Secretary’s direction. *See, e.g.,* BCMR Docket No. 2025-185 (granting a group application made by the Secretary for reinstatement and other relief for 56 applicants previously discharged solely for refusal to receive the COVID-19 vaccine). In other words, the Board is not tasked with making or reversing agency-wide policy or with equalizing relief between record correction applicants and plaintiffs in federal court based solely on a court’s *ex post facto* interpretation of the law that the Secretary relied on to direct and implement that policy.

25. In the absence of direction from the Secretary or Congress, the Board’s mandate does not include harmonizing the relief sought in an untimely record-correction application with monetary awards issued by CoFC in Military Pay Act litigation years after the applicant’s separation.

*c. Constructive service doctrine and related matters*

26. Even assuming, *arguendo*, and despite the foregoing, that the applicant’s request falls within the Board’s purview, the Board’s limited review does not suggest that the potential merits of the claim weigh in favor of waiving the statute of limitations.

27. In *Tippins*, CoFC applied the “constructive service doctrine,” a judicial doctrine developed in Military Pay Act cases to determine the appropriate backpay period once a military separation is determined to have been unlawful. Under that doctrine, courts often treat a member as having continued in service until the end of the enlistment period from which they were unlawfully discharged, unless the government is able to identify and support an earlier date. Because the *Tippins* plaintiffs, like the applicant, were on indefinite enlistments to a maximum of 30 years of service, the court awarded backpay based on new retirement dates reflecting 30 years of service.

28. But the Board does not adjudicate Military Pay Act cases and is not required to mechanically apply the constructive service doctrine as it is applied in CoFC. This is particularly true when the issue before the Board is the broader question of whether the interest of justice requires waiver of untimeliness for a long-delayed application. The Board’s mandate derives from 10 U.S.C. § 1552 to direct military record corrections that it determines are necessary to correct error or injustice.

29. The Board has, in limited circumstances, awarded constructive service, typically to restore a member to a point of eligibility for a statutory benefit (e.g., to permit an improperly separated member with 18 or 19 years of service to reach retirement eligibility), or in conjunction with reinstatement when the record supports an expectation of continued service. In such cases, constructive service and the resulting entitlement to back pay have been the collateral consequences of record corrections found necessary on other bases (e.g., to allow the applicant to reach retirement eligibility, to reinstate the applicant to active service, or to reflect the successful completion of an initial period of enlistment). Without such a basis – as in this case – the Board has not used constructive service to create lengthy additional “on-paper” careers for the purpose of generating large retroactive monetary awards. The Board is disinclined to do so now, particularly because the application is filed far outside the three-year limitation period.

30. In assessing whether awarding constructive service to 30 years would be appropriate in this case, the Board notes the following:

- The applicant’s record reflects multiple derogatory entries, including a significant unauthorized absence resulting in reduction in grade and adverse marks, documented financial irresponsibility requiring performance probation, and other adverse entries.
- The 2010 CRSP considered 1,181 candidates under performance- and conduct-based criteria and selected 377 (approximately 32 percent) for involuntary retirement, including the applicant. Under these circumstances, it is reasonable to infer that the applicant’s record placed him in the bottom third of his peers in terms of performance and conduct at the time of the 2010 CRSP.
- Between 2010 and 2014, the Coast Guard was engaged in concerted efforts to reduce and reshape its senior enlisted force to promote advancement opportunities and long-term force health.
- Unlike members on fixed-term enlistments, the applicant’s indefinite enlistment and more than 20 years of service meant that he could have elected voluntary retirement at any time.

31. In light of these factors, the record does not support the conclusion that the applicant was likely to serve to 30 years. It is at least as plausible that he would have voluntarily retired before 30 years of service or been separated through other force-shaping tools, such as an EPB. Under these circumstances, awarding constructive service to a 30-year retirement date would be highly speculative and would significantly exceed the relief which the Board generally grants. Even were the relief requested within the Board’s authority, the merits do not favor using the constructive service doctrine to confer many additional years of “on-paper” service.

*d. Communications with Board and Coast Guard staff*

32. The applicant asserts that a former Board staff member and an employee of the Coast Guard PPC advised him that he was entitled to relief consistent with *Tippins*. He has provided no documentary evidence corroborating the substance of those communications. In any event, even assuming such assurances were made, erroneous advice from government employees regarding entitlement to monetary benefits cannot bind the government or expand statutory authorities. This is because the Appropriations Clause, U.S. Const. art. I, § 9, cl. 7, permits payment of money from the Treasury only as authorized by statute. *See Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424–32 (1990).

### CONCLUSION

33. In sum, even assuming legal error in the 2010 CRSP, the record does not establish that the relief requested by the applicant (new retirement date reflecting 30 years of service and attendant monetary consequences) is “necessary to correct an error or remove an injustice” within the meaning of 10 U.S.C. § 1552. In *Tippins*, CoFC applied the constructive service doctrine to fashion monetary relief in a Military Pay Act case. By contrast, the Board acts under authority delegated by the Secretary, must operate consistently with Secretarial directives, and is not authorized to overturn Secretary-approved programs with wide applicability or to replicate the outcome determined in litigation in a separate forum under a different statute.

34. In addition, the Board does not view highly speculative constructive service to a 30-year retirement date as an appropriate or necessary record correction in this case. Given the applicant’s record, the Coast Guard’s intentions, and his eligibility to voluntarily retire at any time, such relief would extend well beyond the use of constructive service by the Board in other cases and would function primarily as a vehicle for a large retroactive monetary award.

35. For these reasons, the Board finds that the potential merits of the application are not sufficiently compelling so as to weigh in favor of waiving the statute of limitations.

36. Having considered both the reasons for the applicant’s substantial delay in filing and the potential merits of his claim, the Board does not find that the statute of limitations should be waived in the interest of justice. Accordingly, the application will be denied as untimely.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of retired HSCS [REDACTED] is denied.

January 30, 2026

