


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-072


OSC (retired)

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 July 16, 2024, 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 Chief Operations Specialist (OSC/E-7), was involuntarily retired from the Coast Guard with an honorable characterization of service on August 31, 2014. Her retirement resulted from her selection by the Coast Guard’s 2013 Career Retention Screening Panel (CRSP). The 2013 CRSP was the fourth 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.¹ Eventually, all members retired by the 2012–2014 CRSPs were certified as a plaintiff class. Members

¹ 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.

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. She asks the Board to correct her military records by changing her retirement date to reflect 30 years of service. This correction would, in turn, entitle the applicant to backpay for the period between August 31, 2014, and the date on which she would have completed 30 years of service, potentially in addition to increased 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 enlisted in the Coast Guard on May 19, 1980, and served on active duty until April 26, 1988, at which point she was honorably discharged as a Radioman Second Class (RM2/E-5). She then entered into an agreement to serve in the Coast Guard Reserve for three years. It appears that the applicant continued in the Reserve after the period of her initial agreement. She then began a period of extended active duty in April 2002, before requesting permission to reenlist in the regular component. She reenlisted as an Operations Specialist First Class (OS1/E-6) in February 2003 for an initial four-year period on active duty but evidently extended her active service until eventually being involuntarily retired effective August 31 or September 1, 2014, via the CRSP held in 2013. The applicant received an honorable characterization of service, and at the time of her retirement, she was an OSC/E-7 with more than 20 years of active duty service.²

² The applicant did not submit any personnel records with her application, and the Coast Guard provided the Board with only limited records. For example, very few records documenting the applicant's service between 1988 and 2003 were provided. There are no records at all documenting service after 2009. However, documentation of a reenlistment bonus references matters involving the applicant addressed in BCMR Docket No. 2004-153. Therein, the Board stated that the applicant had more than 22 years of Reserve and Regular component service at that time. The Coast Guard also acknowledged in its advisory opinion (discussed below) that the applicant was involuntarily retired in 2014 as a result of a CRSP, and CRSPs considered only senior enlisted members with at least 20 years of active service. This is all to say that the service history recited in this section is based both on records before the Board and inferences premised on representations by the applicant and Coast Guard.

The only derogatory information appearing in the applicant's personnel records provided to the Board is a Form CG-3307 (Administrative Remarks) ("Page 7") counseling the applicant and documenting her receipt of low evaluation marks related to not wearing the proper uniform on a Military Airlift Command flight.

CRSP Process and Applicant's Retirement

In a memorandum dated December 5, 2012, the Commandant requested authorization from the Secretary of the Department of Homeland Security to conduct an active duty CRSP in 2013. The Commandant advised that CRSPs had been held in 2010, 2011, and 2012 with the Secretary's approval, and that another CRSP in 2013 was in the best interest of the service. He explained that the CRSP process was designed to "strategically rebalance the enlisted force toward a more upwardly mobile performance based demographic," noting that lower-than-normal attrition rates were resulting in reduced accession forecasts, which in turn threatened to slow advancement opportunities for high-performing senior enlisted members. The Commandant stated that all members selected for involuntary retirement would be entitled to full retirement benefits. He identified 10 U.S.C. § 1169 and 14 U.S.C. § 357(j) as the legal authorities for the CRSP, explaining that § 357(j) allowed the Secretary to approve involuntary retirements without action by an Enlisted Personnel Board (EPB) in connection with a "reduction in force." He also noted that, to avoid confusion in the fleet, the CRSP process did not use the term "reduction in force," which had specific meanings in other statutory contexts, whereas Title 14 did not define the term.

The Secretary subsequently approved the Commandant's request, thereby authorizing a CRSP for 2013.

On December 19, 2012, ALCOAST 531/12 announced that planning was underway to conduct a CRSP in June 2013. The message stated that, consistent with prior years, the CRSP would use a "performance and conduct based methodology" to determine which members would be retained on active duty. Excluding those already considered by the 2011 and 2012 CRSPs, the candidate pool consisted of:

- all E-6 and below with 19.5 or more years of active service as of June 1, 2013.
- all E-7 and above with 19.5 or more years of active service who have three or more years time-in-grade as of June 1, 2013.

On January 14, 2013, ALCGENL 008/13 provided additional details and advised that the 2013 CRSP was scheduled to convene on June 17, 2013. The message stated that the panel would be composed of senior officers and senior enlisted members. Candidates were permitted to communicate with the CRSP via a memorandum limited to two pages, focused on mitigating information specific to a documented event or period of substandard

performance and/or unsatisfactory conduct. Members selected for involuntary retirement would be required to retire no later than September 1, 2014.

On May 8, 2013, a precept convening the 2013 CRSP was issued to the officer designated as CRSP president. The precept directed the panel to convene on June 17, 2013, identified the panel members, and specified that agreement by at least two-thirds of the panel was required to recommend a candidate for involuntary retirement. The precept further described the performance- and conduct-based methodology, stating that the panel would evaluate leadership, accomplishment, performance, conduct, professional skills, professional growth, and adherence to the Coast Guard's Core Values. It instructed the panel to focus on the prior seven years of each candidate's record or the period since advancement to the candidate's current paygrade, whichever was longer.

The 2013 CRSP convened in June 2013 and reviewed the records of 399 senior enlisted members. It selected 205 members for retention and 194 for involuntary retirement, including the applicant.

On August 26, 2013, ALCGPSC 106/13 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 reiterated that involuntary retirements recommended by the CRSP would be effective no later than September 1, 2014.

There is no indication in the record before the Board that the applicant appealed her selection for involuntary retirement by the 2013 CRSP.

The applicant was involuntarily retired from the Coast Guard effective August 31, 2014, with an honorable characterization of service.

In addition to 2013, the Coast Guard conducted CRSPs in 2010, 2011, 2012, and 2014, using processes substantially similar to those described above. In total, 832 senior enlisted members were selected for involuntary retirement via CRSP during that period (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.³ 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 enlistment periods from which they were improperly separated, i.e., 30 years of service. *Tippins v. United States*, 176 Fed. Cl. 575 (2025).

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

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 June 2024, the applicant submitted a DD Form 149 (Application for Correction of Military Record) to the Board. Therein, she asserted that she was forced to retire in August 2014 through the CRSP, but should have been allowed to serve until her 60th birthday in October 2019. As such, she requested that her retirement date be adjusted to October 2019 and that she be paid all backpay and allowances up to that date.

The applicant cited the federal courts' decisions in *Tippins*, noting that they had determined that the Coast Guard's CRSPs were "illegal." She stated that, unfortunately, she had not received any notification of the *Tippins* class action and thus had not had an opportunity to join the suit, despite having always kept her address current in Coast Guard systems. She recalled that she had first learned of *Tippins* from a news article posted in a Coast Guard-related Facebook group in June 2024. Under these circumstances, she stated, she was requesting "the same action that participants in the suit were awarded."

The only document enclosed with the application was a copy of the July 2021 CoFC decision in *Tippins*.

VIEWS OF THE COAST GUARD

In September 2025, a Coast Guard Judge Advocate (JA) provided an advisory opinion recommending denial of the application. The JA first acknowledged that the applicant had been involuntarily retired effective September 1, 2014, pursuant to the 2013 CRSP, and stated that according to available records, she had not appealed her selection for involuntary retirement at the time.

The JA then stated that the applicant "would have been eligible for the class" in *Tippins* but did not opt in, and that any Military Pay Act claim she might have had was now barred by the six-year statute of limitations applicable to CoFC actions. The Coast Guard argued, therefore, that granting the requested relief in this case would improperly allow the applicant to create an "end-run" around that statute of limitations.

The advisory opinion further observed that the applicant provided no evidence showing how long she would have remained on active duty, beyond asserting that she "should have been allowed to serve until [her] 60th birthday." The JA noted, in this regard,

that the constructive service case law generally requires a showing that a member was “ready, willing, and able to serve” during the period for which credit is sought, and that no applicable law or policy established age 60 as a mandatory separation age.

APPLICANT’S RESPONSE TO THE COAST GUARD

On October 1, 2025, the applicant e-mailed the Board her reply to the Coast Guard’s advisory opinion, which she characterized as “meritless.” Addressing the Coast Guard’s statement that she did not appeal her CRSP selection, she asserted that she was specifically told by the Deputy Director of Civil Rights, for whom she was working at the time, that she could not appeal the CRSP decision. She also reiterated that she had always kept her contact information current, yet was never notified of the *Tippins* class action or given the opportunity to opt in. She stated that her first awareness of *Tippins* came in June 2024, when she saw a post on a Coast Guard-related Facebook group indicating that the Coast Guard had lost the case and the appeal. She explained that she then contacted the attorney who handled the *Tippins* litigation, who advised her to submit a record correction request to the Board. This, she stated, she did within days, and thus within one week of “learning that [she] had been illegally forced to retire.” She questioned why, under those circumstances, the statute of limitations would not begin to run when she discovered the unlawful nature of her discharge.

The applicant also disputed the Coast Guard’s suggestion that she had not shown she was “ready, willing, and able” to continue serving. She emphasized that at the time of the 2013 CRSP she was on active duty, had not requested retirement, and so was “obviously” ready to continue serving since that is exactly what she was doing. She noted that her children were in school and she had no plans to uproot them, and that she was passionate about and exceptionally successful in her then-current position, which she described as the best job she had held in the Coast Guard and one which she intended to continue “for as long as [she] could.” She further stated that when she was integrated back into active duty from the Reserve after the September 11, 2001, attacks, she was asked whether she could complete 20 years of active duty before age 60 and was informed that 60 was the mandatory retirement age. She stated she was unaware at the time that this information was incorrect and that she could potentially serve beyond age 60. She indicated that, if necessary, she would adjust her requested retirement date, but that realistically she believed she would have chosen to retire at age 60. She also questioned how, given that she was on an indefinite enlistment in 2013, it would be possible for her to produce more “evidence” of how long she would have continued to serve, asserting that she “obviously” planned to remain on active duty.

The applicant concluded by stating that relief should be granted “in the interest of justice” and that the Coast Guard should be held accountable for what she described as “egregious” treatment. She asked the Board to consider that the Coast Guard had been

found “undeniably liable” for wrongdoing in *Tippins*, and emphasized that her involuntary retirement had personally harmed her and warranted relief.

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 her 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 declined a hearing before the Board and requested that her application be considered based on the record.

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 2013 CRSP, effective September 1, 2014. The application was filed in June 2024, nearly 10 years later.

6. The applicant argues that her request should be considered timely because she only became aware of the error or injustice in her case in June 2024, upon learning via news articles and/or social media posts of the *Tippins* plaintiffs' success. Alternatively, she argues that even if her application is considered untimely, the Board should waive untimeliness in the interest of justice, given her lack of awareness of an error or injustice prior to learning of *Tippins*, and the merits of her case. Although she was selected by the 2013 CRSP, and therefore eligible to join the class certified by the court, the applicant

states that she was never notified of the case or given the opportunity to opt in, despite having kept her contact information current with the Coast Guard. The applicant states that in June 2024, she contacted an attorney involved in *Tippins*, who advised her to file an application with the Board, which she did shortly thereafter.

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 2014 that she had been considered by the 2013 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 her with reasonable diligence at the time of her 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 she considered her 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 10 years, effectively acquiescing to her retirement. It was only on learning that the *Tippins* plaintiffs, who timely pursued claims in CoFC, were likely to receive monetary awards, that she 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 her request) was knowable or reasonably discoverable by her at the time of her 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 she had filed a timely application. That is, it is only by virtue of the applicant's delay that the years between her retirement and a hypothetical 30 years of service, or her 60th birthday, have passed and now form the basis of the relief she requests.⁴

⁴ The dates and amount of the applicant's total active service are not clear from the record before the Board, and it is therefore unclear whether the applicant would have reached 30 years of active service before her 60th birthday. Based on her June 2024 and October 2025 submissions, she appears willing to use either date as the basis for her request.

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 her time-barred CoFC claim, but the facts needed to make such a claim or to submit a Board application were known or knowable to her within the three-year period following her retirement. Moreover, regarding class notice in the *Tippins* case, the adequacy of such notice is a matter strictly under the purview of CoFC, and the lack of such notice does not establish that the applicant was prevented from challenging the propriety of her discharge within the three-year limitation period applicable to Board applications. 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 September 2014 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 14 U.S.C. § 357 (j) with respect to the 2012, 2013, and 2014 CRSPs to be erroneous. Thus, for purposes of the analysis below, the Board will presume that the applicant would have been awarded the same relief as the other plaintiffs in *Tippins* if she had been included in the plaintiff class.

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 discretion 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

The Board wishes to acknowledge this issue but notes that its analysis below remains unchanged whether the request is for a five-year period of backpay (September 2014-October 2019) or a somewhat shorter or longer period.

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: (a) the relationship between relief granted by BCMRs and CoFC; and (b) 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 multiple years of additional 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. To the extent the applicant may have been erroneously omitted from class notice, redress would lie with CoFC. But the Board does not regard it as an injustice, in itself, that the applicant may not receive the same relief as the *Tippins* plaintiffs through a record correction application. 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. And again, regarding the applicant's assertion that she was not notified of the opportunity to opt into the *Tippins* litigation, the adequacy of such notice is a matter for CoFC, not the Board.

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 for multiple additional years would be appropriate in this case, the Board also notes the following:

- The 2013 CRSP considered 399 candidates under performance- and conduct-based criteria and selected 194 (approximately 49 percent) for involuntary retirement. Because the applicant's complete personnel file has not been made available, the Board cannot determine precisely what derogatory information, if any, the CRSP relied upon in selecting her. Under these circumstances, however, it is reasonable to infer that the applicant's record placed her in the bottom half of her peers in terms of performance and conduct at the time of the 2013 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 she could have elected voluntary retirement at any time.

31. In light of these factors, a preponderance of the evidence does not support the conclusion that the applicant was likely to serve to 30 years and/or age 60. It is at least as plausible that she 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 the constructive service requested by the applicant 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.

CONCLUSION

32. In sum, even assuming legal error in the 2013 CRSP, the record does not establish that the relief requested by the applicant (new retirement date reflecting 30 years of service or service to age 60 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 nor required to replicate the outcome determined in litigation in a separate forum under a different statute.

33. In addition, the Board does not view highly speculative constructive service for multiple additional years as an appropriate or necessary record correction in this case. Given the Coast Guard's intentions, the applicant's record, and her 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.

34. 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.

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

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of retired OSC [REDACTED] is denied.

January 30, 2026

