DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2025-031

[redacted]
ETCM (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 December 17, 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 Master Chief Electronics Technician (ETCM/E-9), was involuntarily retired from the Coast Guard with an honorable characterization of service on November 30, 2011, after 23 years, 9 months, and 13 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.

The applicant appealed the CRSP's original decision to involuntarily retire him, and his appeal was denied by the Coast Guard. He then applied to this Board in March 2011 requesting reinstatement to active duty or credit for 30 years of active duty service. His application was denied by the Board in March 2012 (after his retirement had taken effect). *See* BCMR Docket No. 2011-130.

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 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 reflect 30 years of service. This correction would, in turn, entitle the applicant to backpay for the period between November 2011 and February 2018, in addition to retroactive and future increases in retirement pay.

As discussed below, the Board finds that the application is a request for reconsideration of the Board's decision in Docket No. 2011-130 on the basis of legal error. Although the request is untimely, the Board finds it is in the interest of justice to waive untimeliness to consider the application on its merits. For the reasons discussed below, however, the application is denied.

SUMMARY OF THE RECORD

The Applicant's Service

The applicant enlisted in the Coast Guard on February 18, 1992, after completing four years of active duty service in the United States Army. He advanced through the enlisted grades to Electronics Technician Senior Chief (ELCS/E-8) and was then commissioned Chief Warrant Officer, paygrade W-2 (CWO2) on September 1, 2004.

On November 3, 2006, the applicant was reprimanded and received nonjudicial punishment (NJP) pursuant to Article 15, Uniform Code of Military Justice, for behaving "in a reproachable manner in that [applicant] routinely engaged in excessive drinking with [his] subordinates." Article 15 proceedings found that the applicant violated Articles 92 (Dereliction in the Performance of Duties) and 134 (Fraternization). Following his relief from duty as commanding officer (CO), the applicant's warrant officer commission was

[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.

revoked and he was discharged. However, he was permitted to immediately reenlist as an ELCS/E-8 for an indefinite term of service on August 16, 2007. This did not result in a break in his continuous active-duty service, as reflected on his DD 214.[2] As noted in Footnote 1 above, Coast Guard policy at the time allowed the applicant to complete 30 years of service once reenlisted for an indefinite term, unless discharged in accordance with applicable law or regulation. In the applicant's case, this would have permitted him to continue serving until February 2018.

CRSP Process and Applicant's Retirement

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:

- all E-6 and below with 20 or more years of active service as of September 1, 2010.
- all E-7 and above with 20 or more years of active service who have three or more 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.

[2] The Board's earlier decision in this case (Docket No. 2011-130) included a more detailed analysis of the applicant's misconduct and the resulting administrative and punitive actions. As discussed in that decision, the applicant's original application asserted that his involuntary retirement under the CRSP constituted "administrative double jeopardy." He makes no such claims in the current application.

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 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.).
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> 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:
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> 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 met the relevant criteria, 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, 2010, 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.

On November 6, 2010, the applicant appealed the involuntary retirement decision by the CRSP. This appeal was denied in an undated memorandum, which the applicant asserts that he received in January 2011.

On April 1, 2011, the applicant was promoted to ETCM/E-9.

The applicant was involuntarily retired effective November 30, 2011, with an honorable characterization of service, after serving on active duty for 23 years, 9 months, and 13 days of active service.

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.

Original Application and Board Decision

The applicant applied to this Board requesting retention in the Coast Guard, or credit for 30 years of active service.[3] In relevant part, the applicant argued that the CRSPs were based on an improper application of 14 U.S.C. § 357(j). Specifically, that the CRSPs were improperly used as a workforce shaping tool and not as a RIF. The applicant contended that although 377 candidates were selected by the 2010 CRSP for involuntary retirement, the Coast Guard's total workforce numbers would remain the same, and that over 1000 advancements would result from the measure. Although the applicant made other arguments, he has not reasserted them here and they need not be addressed.

In its advisory opinion, the Coast Guard stated, in part, that "[b]y identifying senior, retirement eligible personnel, and directing their separation from the Service, the Secretary and the Coast Guard acted to accelerate advancement of junior members by returning advancement and 'A' School opportunities to adequate levels and reinvigorating accession of recruits into the Coast Guard.

The Board issued its decision denying relief on March 20, 2012. The Board initially stated that the question before it was "whether the Secretary's approval of the Coast Guard's request for a CRSP … was, in fact, a RIF order." On this question, the Board ultimately found that "[a]lthough neither the Coast Guard nor the Secretary used the words 'reduction in force' … at the time the Secretary authorized the use of the CRSP … the Coast Guard was undergoing a reduction in force situation." In reaching this conclusion, the Board cited an April 2010 ALCOAST in which the Commandant asserted that the Coast Guard had more personnel than it had funded billets, and that the President's budget request FY 2011 projected billet losses that would exacerbate the situation. The Board noted that the Coast Guard's plan to resolve this situation included both voluntary discharge incentives and involuntary measures (the CRSP), and it stated that it was "not aware of any law or regulation that states that a reduction in force cannot include a reshaping of the workforce during a reduction in force or a reshaping of the workforce after a reduction in force occurs." Notably, the Board did not specifically find that there had been an actual reduction in billets between the 2010 CRSP and the time of the Board's decision.

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,

[3] The Board is not in possession of the original application, but based on the Board's review of the record, it is clear that the original application was received well before the applicant's retirement, while he was still on active duty. The Board apparently analyzed the request as one for reinstatement, however, because in the time between receipt of the application and issuance of the Board's decision, the applicant had been retired from the Coast Guard.

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.[4] 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).

[4] *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

On November 19, 2024, the applicant submitted DD Form 149 (Application for Correction of Military Record) to the Board. His application was supported by a 28-page legal memorandum, 309 pages of supporting material from the applicant's military record, other Coast Guard records, and various documents related to the *Tippins* litigation.

The applicant styles his request as a request for reconsideration of our decision in Docket No. 2011-130. He cites 10 U.S.C. § 1552(a)(3)(D), which provides, in relevant part, that "[a]ny request for reconsideration of a [Board decision], no matter when filed, shall be reconsidered by a board under this section if supported by materials not previously presented to or considered by the Board in making such determination." He argues that he is now presenting material – the federal courts decisions in *Tippins*, along with documents produced by the United States in that case in which the Coast Guard admitted the CRSPs were not a RIF and that it did not actually eliminate the positions of senior enlisted personnel who were involuntarily retired – which was not previously considered by the Board. Thus, he argues, the Board's limitations period for reconsideration requests does not apply. Alternatively, he argues that even if his reconsideration request is considered untimely, the Board should waive the statute of limitations in the interest of justice.

The applicant requests that we grant the following relief:

> "(a) correct his Coast Guard records be corrected to reflect that he was not involuntarily retired on December 1, 2011 but remained on active duty until he reached 30 years of active-duty service and retired on that date.
>
> (b) direct that he be awarded all back active-duty pay, back retired pay, allowances, compensation, emoluments, or other pecuniary benefits due as a result of the corrections;
>
> (c) with respect to item (b), direct that the USCG Pay and Personnel Center (or other appropriate office) determine all payments due to [applicant] because of the corrections to his retirement date. As in *Tippins,* [applicant] expects the opportunity to provide the USCG Pay and Personnel Center with the financial information to calculate the payments owed to him once the records corrections are made."

The applicant makes three arguments in support of his request for relief. First, he contends that the Board erred, as a matter of law, in its previous decision by finding that the 2010 CRSP was a RIF within the meaning of 14 U.S.C. § 357(j). Second, the applicant contends that the *Tippins* court found the CRSPs to be generally unlawful, and that the

Board is bound by that determination. Third, he argues that the "constructive service doctrine," as applied by federal courts in cases of illegal or improper separation, requires that the applicant's records be corrected to reflect 30 years of service.

In conclusion, the applicant's counsel states: "As a matter of law and equity, the Coast Guard unlawfully deprived [applicant] of his profession, primary source of income and military career without affording him the Enlisted Personnel Board protections and procedures prescribed for involuntary retirement of senior enlisted personnel in section 357. The Court of Appeals for the Federal Circuit has unequivocally confirmed as much. [Applicant] respectfully requests that the Board grant the instant request and correct this long-standing error and injustice in his military record."

VIEWS OF THE COAST GUARD

On October 22, 2025, a Coast Guard judge advocate (JA) submitted an advisory opinion which recommended that the Board deny the applicant's request for relief.

The JA recounted that the applicant was involuntarily retired under the 2010 CRSP, with a retirement date of November 30, 2011. It confirmed that the applicant's appeal of the CRSP decision was denied. Although a copy of the Board's decision in Docket No. 2011-130 was enclosed with the Coast Guard's submission, the JA makes no mention of the current application as a request for reconsideration and therefore presents no argument as to whether it should be considered by the Board on that basis.

The JA recounts the procedural history of the *Tippins* litigation, and asserts that the claims of potential plaintiffs involuntarily retired in the 2010 and 2011 CRSPs were precluded from being heard by CoFC by the Barring Act's six-year statute of limitations.

The JA then argues that the "constructive service credit doctrine" requires the member to show that he or she was "ready, willing, and able to serve during the period for which he seeks credit." The JA further argues that the Board is not barred from finding an earlier separation date (presumably before the applicant reached 30 years of service, in this case) if it determines that such date is supported by the record.

The JA concludes that the applicant has failed to present evidence of how long he may have continued to serve after becoming retirement eligible, as required by 33 C.F.R. § 52.24.

For these reasons, the JA asserts that the Coast Guard recommends denial of the application.

APPLICANT'S RESPONSE TO THE COAST GUARD

The applicant was provided with the Coast Guard's advisory opinion on October 22, 2025 and given 30 days to respond. The Board received the applicant's response on November 3, 2025, which consisted of a 13-page legal memorandum prepared by counsel and a copy of the ruling in *Tippins v. United States*, 176 Fed. Cl. 575 (2025). The response consisted entirely of legal argument and did not present any additional factual material for the Board's consideration.

Counsel's memorandum asserts that the applicant's separation was "indisputably unlawful" and that it "mandates correction of his retirement date to reflect 30 years of service and constructive service relief consistent with federal court holdings in *Tippins v. United States*." Counsel makes seven principal arguments in support of his position.

First, he contends that the Coast Guard's opinion mischaracterizes the applicant's request for reconsideration as an original application. Counsel contends that because this is a request for reconsideration, it is not subject to the Board's three-year statute of limitations and that "full reconsideration is mandatory."

Second, he alleges that the advisory opinion fails to apply "controlling constructive service doctrine principles." In support of this contention, counsel cites to numerous legal precedents related to application of the constructive service doctrine by CoFC. He asserts that this doctrine is binding upon the Board, and "does not permit speculation – one way or the other – on a member's career path during the constructive service period."

Third, he alleges that the advisory opinion erroneously invoked the "ready, willing and able" rule. Counsel argues that the constructive service doctrine is a "legal fiction" that renders it improper to speculate when the applicant's career would have ended, but for his involuntary retirement. He argues that federal case law places the burden on the agency to identify evidence that the applicant was not ready to serve during the period of their discharge.

Fourth, counsel alleges that even if the "ready, willing, and able" standard did apply, the standard is met in applicant's case by virtue of his appeal of the CRSP decision and original application to the Board to remain in the Coast Guard.

Fifth, counsel argues that the Board must "squarely address the applicability of the *Tippins* holdings to this case." In particular, he contends that the Board must look to the similarity of the applicant's case to that of the *Tippins* plaintiffs, and that "the only fair and just result is to grant the requested relief."

Sixth, counsel argues that the advisory opinion improperly asserts the Barring Act's six-year statute of limitations on claims before CoFC. He contends that applications for

record correction made pursuant to 10 U.S.C. § 1552 are subject to a different statute of limitations, and that the Barring Act is inapplicable.

Seventh, counsel argues that a failure of the Board to grant the requested relief would violate our "principal statutory function" to correct errors or injustices in Coast Guard records.

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 requested a hearing before the Board in his DD Form 149. 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*.

Statute of Limitations for Reconsideration Requests

5. The Board initially finds that the current application is a request for reconsideration of Docket No. 2011-130, despite the somewhat different nature of the relief requested in each filing (i.e., retention/reinstatement or prospective credit for 30 years of

service versus retroactive credit for 30 years of service and resulting backpay and other monetary benefits).

6. Requests for reconsideration may be made on two bases. The first is through presentation of materials not previously considered by the Board in making our original determination. Such requests "*no matter when filed, shall* be reconsidered by" the Board pursuant to 10 U.S.C. § 1552(a)(3)(D) (emphasis added). Our regulations contained in 33 C.F.R. § 52.67(a)(1) clarify that such materials may only form the basis for reconsideration if they "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The second basis for reconsideration is through presentation of evidence or information demonstrating that the Board committed legal or factual error in the original determination that could have resulted in a different determination. 33 C.F.R. § 52.67(a)(2). This latter basis is provided for only by regulation, not statute, and the regulation places a two-year limitations period on such requests. *Id*., § 52.67(e). Like our statute of limitations, this requirement may be waived if the Board finds it in the interest of justice to do so. *Id*.

7. The Board finds that the latter basis for reconsideration is clearly what applies to this case. The gravamen of counsel's argument is that the *Tippins* case directly contravenes the legal conclusion relied on by the Board in 2012 to find that the CRSPs were an appropriate and lawful exercise of the Secretary's authority under 14 U.S.C. § 357(j). The applicant's reliance on a court's later endorsement of a legal argument that was previously rejected by the Board is a textbook assertion of legal error. Because the applicant's request for reconsideration was received in November 2024, more than 12 years after the Board's March 2012 decision, the request is untimely.

8. The applicant's counsel contends that the rulings and discovery materials produced in the *Tippins* litigation constitute new materials within the ambit of 10 U.S.C. § 1552(a)(3)(D), and thus that no timeliness requirement applies to the applicant's request for reconsideration. In particular, this allegedly new material includes the CoFC and Federal Circuit decisions in *Tippins*, as well as documents produced by the United States in that litigation showing that the Coast Guard "admitted" the CRSPs were not a RIF, and that they did not actually eliminate the positions of senior enlisted members selected for involuntary retirement.

9. With respect to the *Tippins* decisions themselves, the Board finds that these do not constitute new "materials" within the meaning of 10 U.S.C. § 1552(a)(3)(D). Federal courts have uniformly distinguished judicial decisions from newly discovered evidence sufficient to reopen matters or restart a statute of limitations in analogous contexts. *See Salim v. Holder*, 728 F.3d 718, 721 (7th Cir. 2013) (stating that "a change in case law is not considered new 'evidence' for purposes of a motion to reopen" an immigration case); *United States v. Viola*, No. 1:08 CR 506, 2012 WL 3044295, at 2 (N.D.Ohio July 25, 2012) (citing *United States v. Seago*, 930 F.2d 482, 489 (6th Cir.1991) ("New legal theories or

new interpretations of the legal significance of evidence do not constitute 'newly discovered evidence' for the purposes of" obtaining a new trial under Federal Rule of Criminal Procedure 33); *Allen v. Comm'r of Soc. Sec.*, 561 F.3d 646, 652 (6th Cir. 2009) (judicial decision that Social Security applicant was disabled issued after administrative adjudication did not constitute "new and material evidence" requiring remand to Social Security Administration). The Board concurs, and finds that new legal precedent or interpretation issued many years after a Board decision does not constitute new material for purposes of reconsidering the Board's prior decision.

10. The Board next turns to the Coast Guard's alleged "admissions" that the CRSPs were not a RIF and that it did not eliminate the billets of those selected for involuntary retirement. But this information does not constitute material that was "not previously presented to or considered by the board in making such determination." As noted above, ALCOAST 408/10 informed members that the 2010 CRSP was a "workforce tool" intended to address high retention and decreased accessions resulting in slowed advancements and promotions. In his original application, the applicant took the position that the CRSP was a workforce shaping tool rather than a RIF. He noted that despite the involuntary retirement of 377 members selected by the 2010 CRSP, the Coast Guard's total force remained the same size, and that 1000 advancements would result from the CRSP. In its advisory opinion, the Coast Guard stated that the CRSP "would accelerate advancement of junior members." Thus, the applicant argued, and the Coast Guard conceded, that junior members would fill the positions of those retired via CRSP. The Board did not make any specific finding with respect to those billets, but based on the information before it, the Board operated with the assumption that the positions would be backfilled. What the Board did find was that the Coast Guard's overall personnel actions amounted to a RIF, and that it was unaware of any authority prohibiting a RIF from including reshaping of the workforce, either during or after the RIF itself. The Board's decision, therefore, did not turn on labeling the CRSP itself a RIF. Instead, it rested on the view that nothing barred the CRSP from being used in conjunction with, or following, the RIF. In other words, the information now emphasized by the applicant was before the Board in substance at the time it issued its decision in Docket No. 2011-130. In addition, such information was not material to the Board's reasoning and, to the extent any specific documents were not presented directly to the Board, they were unlikely to have produced a different result if they had been.

11. For these reasons, the Board finds that the information now presented by the applicant does not constitute new material sufficient to warrant reconsideration of the Board's decision in Docket No. 2011-130. Therefore, again, the regulatory two-year limitations period applies to the applicant's reconsideration request.

Interest of Justice Analysis – Reasons for Delay

12. The Board will proceed to assess whether the interest of justice warrants waiver of the two-year limitations period. As noted above, this analysis requires consideration of both "the reasons for the delay and the potential merits of the claim based on a cursory review." *Allen v. Card*, 799 F. Supp. at 164.

13. With respect to the reasons for the applicant's delay, he argues that he had a "legitimate excuse for not bringing [his request] earlier." Specifically, he states, he "did not make the instant request earlier because the final appellate decision in *Tippins* was not issued until March 1, 2024."

14. But Docket No. 2011-130 makes clear that the applicant was aware at the time of his original application of the possibility that the CRSP may have violated 14 U.S.C. § 357(j). In fact, he presented this exact argument to the Board, which we rejected. In addition, as noted, 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 request were known or discoverable by him with reasonable diligence at the time of his retirement and during the two-year period following the Board's prior decision. Indeed, the existence of the *Tippins* litigation and the applicant's original application demonstrate that the basis of the current request was discoverable within the two-year period.

15. The applicant has not contended that he intended to request reconsideration within two 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 approximately 12 years, effectively acquiescing to the Board's decision. 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 request. But while the *Tippins* decision(s) may have alerted the applicant to the legal merits of a potential reconsideration request, 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 the Board's initial denial. The applicant chose not to pursue either reconsideration with the Board, or redress in federal court as the *Tippins* plaintiffs did.

16. The Board acknowledges that it previously denied a small number of timely applications from members retired via CRSP (including in the applicant's case). *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. They do not foreclose other applicants from

presenting different arguments or evidence or requesting a different remedy. In fact, the issuance of prior decisions in response to timely applications shows that the issues surrounding the CRSPs were already known or knowable and being challenged during the Board's limitations period, not that the alleged error/injustice in this case was undiscoverable. The existence of these decisions, therefore, did not preclude the applicant from seeking timely relief from the Board.

17. In sum, the record does not show that the applicant faced any particular obstacle in filing a timely request for reconsideration. 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 request for reconsideration to the Board were known or knowable to him at the time of his original application. For these reasons, and based on the entire record, the Board concludes that the reasons for delay offered by the applicant are not so compelling as to weigh in favor of waiving the Board's two-year limitations period for reconsideration requests.

Interest of Justice Analysis – Cursory Review of Potential Merits

18. The Board moves next to a cursory review to consider the potential merits of the application in determining whether the interest of justice warrants 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* decisions did not address the 2010 or 2011 CRSPs. For the purposes of the analysis below, however, 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.

19. 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 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.").

20. 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

21. 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).

22. 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.

23. 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.

24. 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, in addition to retroactive and continuing increases in retirement pay) 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.

25. In short, the *Tippins* plaintiffs timely pursued Military Pay Act claims in CoFC. 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.

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

26. 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).

27. 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.

28. 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.

29. 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.

30. 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

31. 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.

32. 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.

33. 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.

34. 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.

35. In assessing whether awarding constructive service for multiple additional years would be appropriate in this case, the Board also notes the following:

- The applicant's record reflects many positive achievements over a long career in service. They also show that in 2006 he received NJP under UCMJ Article 15 due to excessive drinking with subordinates, and was relieved of his duty as commanding officer, had his CWO commission revoked, and was discharged briefly.
- The 2010 CRSP considered 1,181 candidates under performance- and conduct-based criteria and selected 377 (approximately 32 percent) for involuntary retirement. 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.

36. 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. Although the applicant submitted evidence of his contemporaneous intent to continue serving, it is at least as plausible based on the above factors that he would have been separated through other force-shaping tools, such as an EPB. He was also eligible to retire at any time. 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 multiple additional years of "on-paper" service.

CONCLUSION

37. 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 nor required to replicate the outcome determined in litigation in a separate forum under a different statute.

38. 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 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.

39. 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 limitations period for reconsideration requests.

40. 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 two-year period for reconsideration requests 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 ETCM [redacted] is denied.

January 30, 2026

[redacted]