DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2025-037

[redacted]
BMCM (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 and assigned it to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 17, 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 Boatswain's Mate (BMCM/E-9), was involuntarily retired from the Coast Guard with an honorable characterization of service on August 31, 2011, after approximately 24 years of active service. His retirement resulted from his selection by the Coast Guard's 2010 Career Retention Screening Panel (CRSP). The 2010 CRSP was the first of five annual CRSPs the Coast Guard convened between 2010 and 2014 to select some retirement-eligible senior enlisted members for involuntary retirement in order to create advancement opportunities for junior personnel.

In June 2018, several members involuntarily retired via the 2012, 2013, and 2014 CRSPs filed suit in the U.S. Court of Federal Claims (CoFC), alleging that the CRSPs were unlawful and seeking backpay for the period between their involuntary retirements and the dates on which they would have completed 30 years of active service.[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. 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 September 2011 and September 2017, 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 in August 1987. He reached 20 years of service in 2007, the same year he was promoted to the rank he held at retirement, BMCM/E-9.

The applicant's separation documents reflect numerous positive achievements and awards over his long career. The Board notes, however, that neither the applicant nor the Coast Guard made significant portions of the applicant's personnel files available to the Board.

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; and
- 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.

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.).

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

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

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

On November 15, 2020, ALCGPSC 115/10 announced the CRSP results. Members selected for involuntary retirement were notified of the opportunity to submit an appeal within 15 days, limited to claims of material error, newly discovered evidence, or improper documents in the member's personnel record. The message advised that involuntary retirements recommended by the CRSP would be

effective between September 1, 2011, and December 1, 2011, and stated that members could submit a waiver request if seeking a later retirement date.

The applicant was involuntarily retired effective August 31, 2011, with an honorable characterization of service, after serving on active duty for 24 years.

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

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

Tippins Litigation

In June 2018, members involuntarily retired via the 2012, 2013, and 2014 CRSPs filed a lawsuit in CoFC, challenging the legality of the CRSPs and seeking backpay and new retirement dates reflecting 30 years of service under the Tucker Act, 28 U.S.C. § 1491, and the Military Pay Act, 37 U.S.C. § 204. The court ultimately certified a plaintiff class, and 244 retired members opted in. Members involuntarily retired via the 2010 and 2011 CRSPs were not included in the class because their claims were barred by the six-year statute of limitations applicable to CoFC actions. *See* 28 U.S.C. § 2501.

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

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

In a July 6, 2021, decision, CoFC held that the CRSPs were unlawful, concluding that the term "reduction in force" in § 357(j) was unambiguous and referred to the "elimination of positions or jobs, not merely the separation of personnel." *Tippins v. United States*, 154 Fed. Cl. 373, 378 (2021). The court subsequently denied the government's

motion for reconsideration. *Tippins v. United States*, 157 Fed. Cl. 284 (2021). On appeal, the U.S. Court of Appeals for the Federal Circuit affirmed, holding that § 357(j) "[did] not include actions to separate current occupants from their positions simply to make room for others to be installed in the positions instead." *Tippins v. United States*, 93 F.4th 1370, 1374–75 (Fed. Cir. 2024).

The Federal Circuit remanded the case to CoFC, which granted partial summary judgment in favor of the plaintiffs as to liability. A dispute then arose regarding the methodology to be used in determining the plaintiffs' corrected retirement dates and resulting backpay. Specifically, the Coast Guard sought to retroactively apply high year tenure (HYT), a policy that sets maximum service limits for enlisted personnel based on rank, forcing separation or retirement if they fail to advance within a specific timeframe.[2] 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).

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 his November 2024 application, the applicant requested his retirement date be changed from September 1, 2011, to September 1, 2017.

The applicant stated he had recently learned of the federal court decision(s) in *Tippins*. He stated that he had served faithfully and honorably in the Coast Guard from August 1987 until his 2011 retirement, with superior performance ratings, rapid advancement from Seaman Apprentice to Master Chief Petty Officer, service as an Officer in Charge ashore and afloat, and numerous service awards. He asserted that being involuntarily retired had been extremely difficult for him, since he had planned to serve for the maximum time allowed, and had hoped to compete for a "Gold Badge CMC or an OIC position." Since retirement, he explained, he had started a civilian career in federal government, where he continued to earn outstanding performance ratings.

[2] *See* Military Separations, COMDTINST 1000.4C, Ch. 6 (August 2024).

The applicant explained that he had first learned of the Tippins case through social media in October 2021, but the Federal Circuit's decision had been issued in 2024.

VIEWS OF THE COAST GUARD

In October 2025, a Coast Guard Judge Advocate (JA) provided an advisory opinion recommending denial of the application. While also asserting that the application was untimely, the JA focused primarily on the constructive service doctrine. The JA stated that the applicant had failed to submit any evidence showing he was "ready, willing, and able to serve" during the period in which he was requesting constructive service. In the JA's reading of the doctrine, this showing was required to support the granting of constructive service. As such, the JA concluded that the Coast Guard was unable to offer an opinion as to "whether and how much constructive service credit may be appropriate to award in this case."

APPLICANT'S RESPONSE TO THE COAST GUARD

In November 2025, the applicant's counsel responded to the Coast Guard's advisory opinion. An attached authorization showed the applicant appointed his counsel on November 3, 2025.

The applicant, through counsel, initially argued that his application was timely under the Board's three-year statute of limitations because he only discovered the error or injustice at issue when the federal courts issued their decisions in *Tippins*, and/or when the period for the government to seek Supreme Court review in the case expired in May 2024. He argued that the error/injustice was not discoverable earlier because, before Tippins, the Coast Guard had consistently maintained that the CRSPs were lawful, and this Board had concluded in multiple decisions that the CRSPs were part of a RIF. The applicant further emphasized that, during discovery in *Tippins*, the Coast Guard admitted that it had not actually eliminated the billets of the senior enlisted personnel involuntary retired through the CRSPs. According to the applicant, that fact had not been known to the Board when it decided the earlier CRSP-related applications.

Alternatively, the applicant argued that even if his application were considered untimely, the Board should waive the statute of limitations in the interest of justice. In support of this argument, the applicant asserted that his request was clearly meritorious in light of *Tippins*, and that it had been "effectively futile" to apply to the Board before *Tippins* was decided.

The applicant also pointed to evidence produced in *Tippins* indicating that, during the 2010 CRSP process, the Coast Guard did not characterize the CRSP as a RIF. In particular, he cited July 2010 emails in which Coast Guard personnel stated that the CRSP was not a RIF and should not be messaged as such, but instead as a "flow stimulating tool."

Finally, the applicant argued that the constructive service doctrine, as applied in *Tippins*, required the Board to correct his retirement date to reflect 30 years of service. In this regard, the applicant disputed the advisory opinion's application of the constructive service doctrine. He argued that, once the unlawfulness of a separation has been established, the doctrine does not permit speculation as to whether a member would or would not have remained in service during the constructive service period in question. He noted that the court in *Tippins* applied the doctrine and concluded that the plaintiffs in that case, in materially identical circumstances to his own, should be treated as having served 30 years of active duty.

In any case, the applicant argued, the record showed that he was ready, willing, and able to continue serving when he was involuntarily retired. He stated that he was performing extremely well at the time of his separation, had become an E-9, and received a meritorious service medal, for the two years preceding his involuntary retirement.

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 declined a hearing before the Board and requested that his 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 2010 CRSP, effective August 31, 2011. The application was filed in November 2024, approximately 13 years later.

6. The applicant argues that his request should be considered timely because he only "discovered" the error or injustice in his case when the federal courts found the overall CRSP system unlawful in *Tippins*. Alternatively, he argues that even if his application is considered untimely, the Board should waive untimeliness in the interest of justice, given his lack of awareness of an error or injustice prior to *Tippins*, and the strong merits of his case.

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

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

9. The applicant has not contended that he considered his retirement erroneous or unjust and undertook steps to challenge it within three years but was prevented from doing so by unique or extraordinary circumstances. Instead, the record shows, the applicant remained on retired status and took no action for 13 years, effectively acquiescing to his retirement. It was only on learning that the *Tippins* plaintiffs, who timely pursued claims in CoFC, were likely to receive monetary awards, that he filed the present application. But while the *Tippins* decision(s) may have alerted the applicant to the legal merits of a potential claim, the underlying basis for the claim itself (i.e., the facts sufficient to support his request) was knowable or reasonably discoverable by him at the time of his separation from the Coast Guard, for the reasons discussed in the preceding paragraph.

10. The Board 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. The applicant contends that for this reason, and because the Coast Guard maintained that the CRSPs were lawful before *Tippins*, a timely application to the Board would have been futile. 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.

11. The Board is also unpersuaded by the applicant's argument that evidence developed in the *Tippins* case – including contemporaneous Coast Guard messaging and communications that the 2010 CRSP was not a RIF, and an "admission" by the Coast Guard that the billets of those retired via CRSP were not eliminated – renders the current application timely or makes the applicant's delay excusable. While such evidence appears to have played a role in the federal courts' decisions in *Tippins*, its revelation did not constitute the first point at which the applicant discovered or could have discovered his claim with reasonable diligence, for the reasons discussed in paragraph 8, above. The Board does not find that revival of an expired record correction application on the basis that additional evidence – developed by separate litigants who did file timely monetary claims in federal court – to be consistent with the purpose of the Board's statute of limitations or interest of justice waiver standards.

12. The Board briefly acknowledges the applicant's reference to *Wielkoszewski v. Harvey*, 398 F. Supp. 2d 102, 111–12 (D.D.C. 2005) for the proposition that "where later-overturned regulations prevent a servicemember from receiving benefits, the [BCMR's] statute of limitations will not begin to run until the regulatory change is made because, in fact, until the regulations were changed, there was no error or injury to discover." But *Wielkoszewski* was discussing the concept of "reopening" prior agency action in the context of other cases in which the Army had amended its own regulations and affirmatively invited members precluded from certain benefits under the prior version to reapply for consideration under the amended regulation. That is not the situation here, nor has the applicant pointed to any authority supporting the idea that a long-expired limitations period should be restarted based on an *ex post facto* interpretation of caselaw invalidating an agency's interpretation of a statute.

13. In sum, the record does not show that the applicant faced any particular obstacle in filing a timely application. The *Tippins* decisions alerted the applicant to the potential value of his time-barred CoFC claim, but the facts needed to make such a claim or to submit a Board application were known or knowable to him within the three-year

period following his retirement. For these reasons, and based on the entire record, the Board concludes that the limitations period for filing a Board application commenced with the applicant's August 2011 retirement. In addition, the Board finds that the reasons for delay offered by the applicant are not so compelling as to weigh in favor of waiving the Board's statute of limitations.

Cursory Review of Potential Merits

14. 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. 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.

15. 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.").

16. 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

17. 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).

18. 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.

19. 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.

20. 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.

21. 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

22. 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).

23. 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.

24. 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.

25. 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.

26. 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

27. 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.

28. 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.

29. 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.

30. 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.

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

- The 2010 CRSP considered 1,181 candidates under performance- and conduct-based criteria and selected 377 (approximately 32 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 him. Under these circumstances, however, 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.

32. 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

33. In sum, even assuming legal error in the 2010 CRSP, the record does not establish that the relief requested by the applicant (new retirement date reflecting 30 years of service and attendant monetary consequences) is "necessary to correct an error or remove an injustice" within the meaning of 10 U.S.C. § 1552. In *Tippins*, CoFC applied

the constructive service doctrine to fashion monetary relief in a Military Pay Act case. By contrast, the Board acts under authority delegated by the Secretary, must operate consistently with Secretarial directives, and is not authorized to overturn Secretary-approved programs with wide applicability nor required to replicate the outcome determined in litigation in a separate forum under a different statute.

34. In addition, the Board does not view highly speculative constructive service 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.

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

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

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of retired BMCM [redacted] is denied.

[redacted]

March 17, 2026