United States Court of Appeals for the Federal Circuit

TONIA TIPPINS, DERRIK MAGNUSON, GEORGE HOLLOWAY, JENNIFER REHBERG, GLENDA SMITHLEETH, M. ALLEN BUMGARDNER, FOR THEMSELVES AND AS REPRESENTATIVES OF A CLASS OF SIMILARLY SITUATED PERSONS,
Plaintiffs-Appellees

v.

UNITED STATES,
Defendant-Appellant

2022-1462

Appeal from the United States Court of Federal Claims in No. 1:18-cv-00923-DAT, Judge David A. Tapp.

Decided: March 1, 2024

NATHAN S. MAMMEN, Kirkland & Ellis LLP, Washington, DC, argued for plaintiffs-appellees. Also represented by GRACE BRIER.

DOUGLAS GLENN EDELSCHICK, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellant. Also represented by BRIAN M. BOYNTON, MARTIN F. HOCKEY, JR., PATRICIA M. MCCARTHY; JARED HOOD, JUSTIN

RAND JOLLEY, Office of Claims and Litigation, United States Coast Guard, Washington, DC.

Before REYNA, TARANTO, and CHEN, *Circuit Judges*.

TARANTO, *Circuit Judge*.

Between 2010 and 2014, the United States Coast Guard convened Active Duty Enlisted Career Retention Screening Panels (CRSPs) to select enlisted service members for involuntary retirement. This process did not follow the procedures and standards of then-applicable 14 U.S.C. § 357(a)–(h), which (before those provisions were repealed in 2016) addressed involuntary retirement of certain Coast Guard service members with specified seniority. Several former Coast Guard service members, after being involuntarily retired through the CRSP process, brought this action on behalf of themselves and others similarly situated against the United States in the Court of Federal Claims (Claims Court) under the Tucker Act, 28 U.S.C. § 1491, asserting that their retirements were contrary to law because the Coast Guard proceeded without following § 357(a)–(h). The government responded by invoking § 357(j), which stated that § 357(a)–(h) did not apply to a "reduction in force." The applicability of that exception to the CRSPs is the issue on appeal.

The Claims Court held, on the parties' cross-motions for summary judgment, that the involuntary retirements were unlawful because the CRSPs were not part of a "reduction in force." *Tippins v. United States*, 154 Fed. Cl. 373, 375, 378–83 (2021) (*Tippins I*). On the government's motion for reconsideration, the Claims Court reiterated its conclusion and entered partial final judgment for the six named plaintiffs. *Tippins v. United States*, 157 Fed. Cl. 284, 292 (2021) (*Tippins II*). The government appeals. We affirm.

I

Plaintiffs Tonia Tippins, Derrik Magnuson, George Holloway, Jennifer Rehberg, Glenda Smithleeth, and M. Allen Bumgardner are Coast Guard veterans who each honorably served twenty years or more and reached senior enlisted ranks. Between 2012 and 2014, the Coast Guard selected plaintiffs for involuntary retirement through CRSPs created as part of a program for clearing spots to make room for the promotion of less senior service members.

The CRSPs were first authorized in 2010, when the Coast Guard became concerned about high retention among retirement-eligible enlisted personnel and the resulting lack of advancement opportunities for high-performing junior enlisted personnel. *See Tippins I*, 154 Fed. Cl. at 375–76. To address the perceived "'workforce flow'" issue, the Commandant of the Coast Guard sought and received approval from the Secretary of Homeland Security to conduct a CRSP in the fall of 2010 to select service members for involuntary retirement. *Id.* (quoting J.A. 74). Between 2010 and 2014 the Coast Guard received approval for, and conducted, five separate CRSPs, one each year. *Id.* at 376–77.

Each memorandum authorizing the CRSPs at issue cites two statutes, 10 U.S.C. § 1169 and 14 U.S.C. § 357(j), as the sources of the "legal authority to conduct a CRSP panel." J.A. 39, 41, 43. In relevant part, 10 U.S.C. § 1169 provides (as it did in 2010–14) that "[n]o regular enlisted member of an armed force may be discharged before his term of service expires, except . . . as prescribed by the Secretary concerned." At the time relevant to this case, 14 U.S.C. § 357 authorized the Commandant of the Coast Guard to involuntarily retire enlisted personnel with 20 or more years of service and outlined procedures and standards for selecting those service members based on recommendations of an "Enlisted Personnel Board[]." 14 U.S.C.

§ 357(a)–(h).[1] But § 357(j) stated an exception: "When the Secretary orders a reduction in force, enlisted personnel may be involuntarily separated from the service without the Board's action." It is undisputed that the relevant CRSPs were not enlisted personnel boards and did not proceed under the standards and procedures of § 357(a)–(h). As the case is presented to us, plaintiffs' involuntary retirements were lawful if and only if they were part of a "reduction in force" ordered by the Secretary under § 357(j).

In the CRSPs, the Coast Guard involuntarily retired several hundred enlisted members, including the six named plaintiffs. J.A. 123. In 2018, three of the plaintiffs brought this action under the Tucker Act, 28 U.S.C. § 1491. J.A. 27–28. Several months later, an amended complaint was filed adding three additional named plaintiffs. J.A. 28. Of relevance to this appeal, all six named plaintiffs served in positions at pay grade E-7 or higher at the time of their involuntary separation. J.A. 291–94 ¶¶ 7–12. The plaintiffs asserted wrongful-discharge claims and sought constructive service credit, back pay, allowances, and reinstatement to active duty pursuant to the Military Pay Act, 37 U.S.C. § 204(a). J.A. 291; Amended Complaint, *Tippins v. United States*, No. 18-cv-00923 (Fed. Cl. Nov. 16, 2018), ECF No. 8.

In July 2021, the Claims Court granted the plaintiffs' motion for summary judgment and denied the government's cross-motion for summary judgment. *Tippins I*, 154 Fed. Cl. at 375. The court explained that the dipositive

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[1] Congress enacted the relevant provisions of § 357 in 1991. Coast Guard Authorization Act of 1991, Pub. L. No. 102-241, § 6, 105 Stat. 2208, 2210–12. The relevant subsections were repealed in 2016. Coast Guard Authorization Act of 2015, Pub. L. No. 114-120, § 215, 130 Stat. 27, 45–46 (2016) (repealing § 357(a)–(h), (j)). We cite the statute as it existed during 2010–14, without including a date.

issue in the litigation is whether the CRSPs were lawfully convened as part of a "reduction in force" pursuant to 14 U.S.C. § 357(j). *Id.* at 379. That is, no other statutory argument was advanced by the government to defend the retirements. The court then concluded that the language of the statute is unambiguous and held that a "'reduction in force' is the elimination of positions or jobs, not merely the separation of personnel." *Id.* at 378–83.[2]

The government does not dispute that, after the named plaintiffs were involuntarily retired, their specific billets (*i.e.*, positions)[3] were not eliminated. J.A. 102–03. Nor does the government allege that the relevant CRSPs were used to eliminate *any* billets in pay grade E-7 and above. J.A. 124 ("The Coast Guard generally did not eliminate the billets that were occupied by the enlisted service members in higher grades (E-7 and above) who were selected for involuntary retirement."). Rather, the authorization memoranda stated the purpose of these CRSPs in the following terms: to "strategically rebalance the enlisted force toward a more upwardly mobile, performance based demographic." J.A. 39, 41, 43. While the Coast Guard did reduce the number of total authorized enlisted billets service-wide during the period at issue, *Tippins I*, 154 Fed. Cl. at 377, the

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[2] The Claims Court also held, in the alternative, that if the statute were to be deemed ambiguous, the Coast Guard's current interpretation of the term "reduction in force" would not be entitled to deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Tippins I*, 154 Fed. Cl. at 383–86; *see also Tippins II*, 157 Fed. Cl. at 286–88, 288 n.4. The government does not argue for *Chevron* deference on appeal.

[3] Both parties agree that, in this context, Coast Guard billets can be understood as analogous to positions in the civilian context. *See* Oral Arg. at 14:51–15:24, 31:49–31:56.

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