

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT  
FOR *JOHNSON et al. v. KENDALL* CASE No. 3:21-cv-01214**

**CASE NUMBER  
FD-2015-00470-2**

**SUMMARY:** Pursuant to an Air Force-wide class action lawsuit, *Johnson et al. v. Kendall*, Case No. 3:21-cv-01214, settled on 11 June 2024, the Air Force Discharge Review Board (AFDRB) reconsidered the Class Member's case file under the authority provided in the Under Secretary of Defense memorandum, Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations, dated 25 June 2018, known as the "Wilkie Memo." to upgrade discharges to ensure fundamental fairness. As part of the Air Force-wide class action lawsuit, the Class Member (Applicant) for the referenced case number was identified as part of the Automatic Reconsideration Group. The AFDRB reviewed the record per the parameters of the settlement agreement as noted above.

If no relief was merited under the Wilkie Memo standard of liberal consideration, the AFDRB then also reviewed the applicant's case to ensure appropriate application of liberal consideration where there was a diagnosis of Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), or other mental health conditions, or experiences of sexual assault or sexual harassment, or records documenting that one or more symptoms of PTSD, TBI, other mental health conditions, or experiences of sexual assault or sexual harassment existed or occurred during military service, under the authority provided in the Under Secretary of Defense memorandum, Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2017, known as the "Kurta Memo" standard of liberal consideration.

The Applicant was discharged on 11 April 2012 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a Character of Service of Under Honorable Conditions (General), a Narrative Reason of Misconduct (Minor Infractions), and a Reentry Code of 2B, as reflected on the DD 214, *Certificate of Release or Discharge from Active Duty*.

As an Automatic Reconsideration Group member, the AFDRB sent notice to both the service member's last known mailing address and e-mail address on file, which stated that 1) the AFDRB would reconsider the Applicant's case without a need for further response from the member; 2) if the member wished to supplement their application, they should submit supplemental evidence within 60 days of the notice; 3) submitting medical evidence in support of the application would benefit the member; 4) provided examples of the types of evidence that may be relevant; and 5) included information regarding available resources to assist members in supplementing their applications.

**COUNSEL:** The Applicant was not represented by Counsel.

**DISCUSSION:** The AFDRB, under its responsibility to examine the propriety and equity of an Applicant's discharge, is authorized to change the characterization of service and the narrative reason for discharge if such changes are warranted. If applicable, the Board can also change the Applicant's reentry code. In reviewing discharges, the Board presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence to rebut the presumption, including evidence submitted by the Applicant. The AFDRB thoroughly reviewed the circumstances that led to the discharge and the discharge process to determine if the discharge met the pertinent standards of equity and propriety.

The documentary evidence the AFDRB considered as part of the review includes but is not limited to the DD Form 293, *Application for the Review of Discharge from the Armed Forces of the United States*, and any additional documentation submitted by Applicant and/or counsel; the Applicant's personnel file from the Automated Records Management System (ARMS); and the AFDRB Brief detailing the Applicant's service information and a summary of the case to include the AFDRB's medical opinion which included a narrative

explanation as to the following: a) whether the available record reasonably supports that a mental health condition existed at the time of the Applicant's military service; b) whether these conditions were present at the time of the misconduct; c) whether these conditions were mitigating for the misconduct; d) whether the Applicant received mental health and/or medical evaluations before their administrative separation. In accordance with DoDI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, the AFDRB previously provided a copy of the examiner's brief, extracted from available service records, containing pertinent data regarding the circumstances and character of the military service to the member after the Board adjudicated the original AFDRB case.

In accordance with the terms of the Settlement Agreement, the Board reconsidered the Applicant's case based on liberal consideration standards. Specifically, the Board was required to include a member who was a clinical psychologist or psychiatrist, or a physician with training on mental health issues connected with post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, if the former service member, while serving on active duty, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist or psychiatrist as experiencing PTSD or TBI as a consequence of that deployment. In this former member claims that the PTSD or TBI is based in whole or in part on sexual trauma, intimate partner violence or spousal abuse, the Board was required to seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with PTSD or TBI or other trauma as specified in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The Board was required to review the four questions under the Under Secretary of Defense Memorandum, *Clarifying Guidance to Military Discharge Review Boards and Boards of Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment*, dated 25 August 2017, and commonly referred to as the "Kurta Memo" when weighing evidence in requests for modification of discharges due in whole or in part to mental health conditions, including PTSD, TBI, sexual assault, and sexual harassment.

The AFDRB reviewed the military records and new evidence as part of the Settlement Agreement. The Applicant did not submit new evidence.

**FINDING:** The Board was conducted on 15 May 2025.

The Board deliberated and determined the Applicant's package did not merit relief. The Board considered the factors laid out in the attachment to the Under Secretary of Defense memorandum, *Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations*, dated 25 June 2018, known as the "Wilkie Memo." The Board considered the factors listed in paragraphs (6)(a)-(6)(l) and (7)(a)-(7)(r) of this memorandum and found no evidence of inequity or impropriety.

Therefore, the Board was required to review the four questions under the Under Secretary of Defense Memorandum, *Clarifying Guidance to Military Discharge Review Boards and Boards of Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment*, dated 25 August 2017, and commonly referred to as the "Kurta Memo" when weighing evidence in requests for modification of discharges due in whole or in part to mental health conditions, including PTSD, TBI, sexual assault, and sexual harassment. Also, on reconsideration, the Board considered the presence of a mental health condition in itself does not warrant an upgrade.

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge? *He claimed the reason for his discharge was for the failure of his EOC [End of Course] test for the second time. He made no*

*contentions regarding having a mental health condition or how his mental health condition may excuse or mitigate his discharge.*

2. Did that condition exist/experience occur during military service? *The applicant attended about six individual psychotherapy sessions from the period between 28 December 2011 to 28 March 2012 by initial referral from his squadron for work-related problems and sleep issues. His notes were mostly vague, but it was noted that he had not been able to adjust to the day shift which may have caused him to feel tired and have sleep problems. It appeared his mental health treatment occurred after he had already failed his first EOC test and no mention in his treatment records that his mental health condition caused him to fail his EOC test. He was given a diagnosis of Adjustment Disorder or Adjustment Disorder with Depressed and Anxious Mood.*

3. Does that condition or experience actually excuse or mitigate the discharge? *According to Notification Memorandum dated 19 March 2012, he was recommended (and was later approved) for discharge for sleeping at work, losing his line badge, failing to report for an appointment, reporting to work with the improper rank on his uniform, turned off a power unit supplying power to the aircraft and thereby endangering six personnel and the aircraft, received an unsatisfactory score on his fitness assessment, failed to obey a regulation by not wearing his hat while outdoors, failed his Career Development Course (CDC) or EOC that he attributed to being nervous before the test despite being well prepared and admitted to being unfamiliar with one of the engine types on the test, left his CDC material unattended for almost 24 hours, failed his dorm room inspection, reported for duty wearing the wrong uniform to mandatory formation, failed to obey prescribed regulations regarding the proper use of vehicle headlights and tail lights, and failed his CDC for the second time. His commander noted that he failed his first CDC because of nervousness, but this statement is not indicative that he had a bona fide mental health condition. Being nervous for a test is a common response and people with or without a mental disorder may experience nervousness before or during a test. His supervisor had documented in his Course Exam Failure Survey dated 18 January 2012 that there is a belief that his lack of sleep related to his sleep issues did not allow him to retain the information he had studied. This belief/statement is reasonable as there are scientific studies finding lack of sleep may hinder information from being stored into long-term memory. The applicant did make complaints of having sleep issues from adjusting to the day shift and affecting his mood to his mental health provider. However, his sleep issues may have caused and may excuse and mitigate his two CDC/EOC test failures but do not explain or cause his remaining misconduct. There is no evidence his mental health condition had a direct impact or was a contributing factor to most of the misconduct resulting in his discharge. Therefore, his mental health condition does not excuse or mitigate his discharge.*

4. Does that condition or experience outweigh the discharge? *Since the applicant's mental health condition does not excuse or mitigate all of the reasons for his discharge, his mental health condition also does not outweigh his discharge. Some of the other misconduct not attributable to the adjustment disorder was either premeditated or not causally related.*

**CONCLUSION:** After thoroughly reviewing and reconsidering the Applicant's case including all available evidence, the member's contentions, summary of service, service/medical record entries, and discharge process, the Board concluded:

**The Character of Service:** The AFDRB voted unanimously to deny the Applicant's original request to upgrade their Discharge Characterization.

**Narrative Reason/SPD Code:** The AFDRB also voted unanimously to deny upgrading the Narrative Reason/SPD Code. Therefore, the Narrative Reason shall remain.

**Reentry Code:** The AFDRB also voted unanimously to deny upgrading the Reentry Code. Therefore, the Reentry Code shall remain.

The Board President approved the results of the AFDRB on 15 May 2025.

Should the Applicant wish to appeal this decision, they may request a personal appearance before this Board. An Applicant must be within 15 years of discharge. If their discharge was more than 15 years ago, they may apply for relief to the Air Force Board for Correction of Military Records (AFBCMR). Instructions on how to appeal an AFDRB decision can be found at <https://afrba-portal.cce.af.mil/>.

The Applicant may request a list of the Board members and their votes. In addition, when the Applicant requests, the AFDRB will disclose the type of mental health professional providing the opinion, their licenses and certifications, and the identity of the mental health professional if their military pay grade is at or above the O-6 level, or its civilian equivalent by writing to:

Air Force Review Boards Agency  
Attn: Discharge Review Board – Reconsideration Case  
3351 Celmers Lane  
Joint Base Andrews, MD 20762-6435