

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

**CASE NUMBER
FD-2018-00389-2**

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," 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 6 December 2017 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 (Serious Offense), and a Reentry Code of 2B, as reflected on the DD 214, *Certificate of Release or Discharge from Active Duty OR Certificate of Uniformed Service*.

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 7 August 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 did not find an 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? *Yes. A review of the available records revealed evidence that the Applicant was diagnosed with an Adjustment Disorder. On the DD293 application, the Applicant contended, "I got a false accusation of a sexual assault case made against me and there was no proof that I sexual assaulted the female and I got discharged with a General Under Honorable and she dropped the case, and the AF just kicked me out."*

2. Did that condition exist/experience occur during military service? *Yes. The Board considered the "Kurta Memo" guidance that a "diagnosis made by a licensed psychiatrist or psychologist that the condition existed during military service will receive liberal consideration." In this case, a psychiatrist diagnosed the Applicant with Adjustment Disorder with Depressed Mood during their time in service. Consequently, the Board is persuaded that the Applicant had an Adjustment Disorder, and the condition existed during military service. A review of the available records revealed evidence that the Applicant first came to the attention of installation mental health services in June 2017 when they were brought to the Emergency Department (ED) by a 'battle buddy.' The Applicant was assessed by a psychiatric consultant to the ED for worsening depression and suicidal ideation in the context of recent social stressors; an investigation following accusation of sexual assault. The Applicant indicated they had ongoing legal stressors for the past 7-8 months and admitted to symptoms of depression but denied experiencing any suicidal ideation. As a result of this ED visit, the Applicant was diagnosed with Adjustment Disorder with Depressed Mood. The Applicant was recommended for inpatient for safety reasons, and he agreed to a voluntary admittance to the inpatient psychiatry unit. The Applicant was discharged 4 days later, and the discharge summary noted that the Applicant was compliant within the treatment environment, the event leading to hospitalization was an isolated incident, and that no medications were prescribed during the inpatient stay. On discharge, the Applicant's diagnosis was changed to a focus of treatment: Problems Related to Other Legal Circumstances. The Applicant followed up with Mental Health after discharge and was given a diagnosis of Problems with Adjustment to Lifecycle Transition. The Applicant was seen on three occasions by Mental Health between June and July 2017 and did not return to the clinic once he was removed from the High Interest List in late July 2017.*

3. Does that condition or experience actually excuse or mitigate the discharge? *No. The "Kurta Memo" requires the Board to consider "conditions or experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge." The Board reviewed all available records and finds the Applicant's condition or experience does not excuse or mitigate the discharge. A review of the Applicant's DD214 revealed the Applicant was discharged with an Under Honorable Conditions (General) characterization for Misconduct (Serious Offense) with 1 year, 4 months, 18 days' time in service. A review of the available portions of the discharge package revealed evidence cited by command to support the discharge included: a LOR for, after cuddling with an Airman in her room, 1) kissing her and grabbing her breast without consent; and 2) Against her will and after being told repeatedly to stop, digitally penetrating the Airman with the intent to satisfy his sexual urges. A review of available records revealed evidence that the Applicant's contact with mental health during service began some 7 to 8 months into the investigation that was initiated when he was accused of sexual assault. The records also revealed evidence that the Applicant was briefly diagnosed with Adjustment Disorder with Depressed Mood during their time in service when they described experiencing mild symptoms of depression, secondary to the stress of the sexual assault investigation when they were assessed in the Emergency Department. However, this diagnosis was quickly removed during the Applicant's brief voluntary inpatient stay and replaced with the Applicant's focus of treatment of his legal issues and lifecycle transitions. The Applicant transitioned to outpatient treatment for 4 weeks and then discontinued treatment with only the above Legal Issues and problems related to lifecycle transition listed as the focus of treatment. A review of the available medical records revealed no evidence that the Applicant was suffering from a mental health condition prior to their ED visit. Overall, a review of all available records revealed insufficient evidence that the Applicant's mental health condition or experience substantially contributed to, excused, or mitigated their misconduct or subsequent discharge.*

4. Does that condition or experience outweigh the discharge? *No. Since the Board determined the Applicant's condition or experience did not excuse or mitigate the discharge, the Board also determined the condition, or experience did not outweigh the discharge. However, even if the Board found some mitigation resulting from Applicant's condition, it does not outweigh the significant misconduct of the sexual misconduct.*

The board also considered the Applicants contention there was impropriety and injustice regarding their discharge. Applicant specifically asserts the sexual assault allegation stemmed from a false accusation. The Applicant further asserts the alleged victim dropped the case and the Air Force discharged him anyway. The Applicant did not provide any evidence to support these contentions. The Board is not an investigative body and presumes regularity in the conduct of governmental affairs. This means that, absent evidence to the contrary, the Board presumes that military and civilian personnel involved in a member's discharge carried out their duties correctly, lawfully, and in good faith. The applicant bears the burden of providing evidence to overcome this presumption, and the Board will only grant relief if it determines there is sufficient evidence to conclude the applicant's discharge was not proper or equitable in accordance with Enclosure 4 of DoDI 1332.28.

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. Therefore, the Character of Service shall remain.

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 28 September 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