

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

**CASE NUMBER
FD-2019-00325-2**

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 8 September 2014 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 Pattern of Misconduct, 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 5 June 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? *The applicant contended his discharge was inequitable based on evidence regarding his psychiatric/mental health being omitted to facilitate adherence to the AFI. The omitted facts included PTSD and psychiatric care relevant to incidents in Afghanistan. He requested liberal consideration be applied to his petition for an upgrade of his discharge.*

2. Did that condition exist/experience occur during military service? *There is clear evidence from his military and service treatment records that the applicant had deployed to Bagram, Afghanistan for about six months from 2012 to 2013 [estimated from November/December 2012 to May/June 2013] and received the Afghanistan Campaign Medal with two devices for his service. From his traumatic deployment experiences, he developed PTSD symptoms of nightmares, sleep difficulties, anxiety, depression, and irritability. He received individual psychotherapy and medication management treatment services from the period of 09 September 2013 to 20 August 2014 and was noted to have benefitted from treatment, specifically medications used to manage and alleviate his symptoms. The last encounter notes from his psychiatrist dated 20 August 2014 stated the applicant reported he continued to have excellent results from a low dose of Seroquel indicating his symptoms were improving with the medication. He was diagnosed with Adjustment Disorder with Depressed Mood, Adjustment Disorder with Anxiety, Anxiety Disorder Not Otherwise Specified, Depression, and PTSD by his mental health providers during his military service. The applicant was evaluated by ADAPT on 07 and 11 March 2014 by referral of his commander following his incident of aggravated DUI and refusing a blood test. He was assessed not to meet the diagnostic criteria for any alcohol use disorders and was recommended to attend their alcohol education course. He completed the recommended course the following week.*

3. Does that condition or experience actually excuse or mitigate the discharge? *The applicant was discharged from service for the following reasons: 1) Failing to obey an order by leaving his assigned post against his leader's specific instructions and was unprofessional, confrontational, and failed to maintain his military bearing when confronted by his leadership on or about 10 February 2012; 2) Failing to obey an order by leaving his assigned duty weapon unattended with a loaded magazine inside the magazine as well on or about 16 February 2012; 3) Failing to take his scheduled fitness assessment as ordered by his Flight Chief and when questioned by this individual, he stated he could not perform his fitness test because he was on a profile when he was actually not on or about 30 April 2012; 4) Reporting to work without shaving on or about 21 June 2012 and was not the first time he was counseled for this infraction; 5) Failing to obey an order by using his cell phone at work and posted a status on Facebook about a job-related event that violated the principles of operation security on or about 26 June 2012; 6) Failing to take his Airfield Driver's License Test as ordered by his supervisor and lied about it on or about 13 July 2012; 7) Driving at a high rate of speed while under the influence of alcohol (DUI), had an open container in his vehicle, was belligerent towards police officers, hospital staff, and his squadron leadership on or about 15 March 2014. He was charged with Aggravated DUI, Consumption/Possession of an Open Container, and Careless Driving by the Alamogordo Police Officers; and 8) Discharging his privately owned weapon in his residence and the bullet exited through his front door and into a nearby residence on or about 06 June 2014. He was charged with Negligent Use of a Deadly Weapon and Criminal Damage to Property by the Otero County Sheriff's Office. He received a Letter of Reprimand (LOR) for each of these incidents. The applicant had submitted a statement in response to his discharge action dated 15 August 2014 addressing his documented acts of misconduct serving the basis of his discharge. He stated he was found not guilty of a DUI by the court and the charges for negligent discharge of a firearm were dropped. He did not discuss why the charges were being dropped. He denied he was drinking on the night of his alleged DUI and explained that his behavior was caused by his anti-anxiety medication prescribed by his provider. He discussed being diagnosed with PTSD caused by his experiences in Afghanistan and that he had been receiving mental health treatment for this condition. He claimed his two LORs received in February 2012 (leaving his assigned post, being unprofessional toward his leadership, and leaving his loaded assigned weapon unattended) were completely falsified, but his remaining four LORs were deserving. He believed the four LORs and potential negligent discharge (the state prosecutor was dropping the charges) were not enough to constitute anything other than an Honorable discharge. While there is sufficient evidence to demonstrate that*

the applicant had developed and was diagnosed with PTSD from his experiences in Afghanistan during service, his mental health condition could explain and cause one of his misconducts (alleged DUI) but did not cause his remaining misconducts. Most of his misconduct, some of which were rather serious offenses, occurred before he deployed to Afghanistan so his condition of PTSD developed from this deployment experience could not have caused these pre-existing misconduct problems. There is no evidence or records that he had any mental health conditions or concerns before he deployed to Afghanistan as evidenced by his numerous pre-deployment health assessments and annual periodic health assessments where had denied having any mental health issues. He had two documented misconducts that occurred after he returned from deployment and they were his DUI (he denied engaging in this misconduct), and his charge for negligent discharge of a firearm (he did not discuss why the charges were being dropped nor did he discuss or deny his involvement in his incident). His misconduct and charge of negligent discharge of a firearm regardless of whether it was dropped by the court for various reasons is an egregious offense/misconduct and could not be excused or mitigated even if he had a mental health condition at the time. He could have killed or seriously injured another person with his action. For these reasons discussed, the applicant's mental health condition or traumatic deployment experiences do not excuse or mitigate his discharge.

4. Does that condition or experience outweigh the discharge? *Since the applicant's mental health condition or traumatic deployment experiences do not excuse or mitigate his discharge, his mental health condition or traumatic experiences also do not outweigh his original discharge.*

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 5 June 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://afriba-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