

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

**CASE NUMBER
FD-2019-00396-2**

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 26 May 2015 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a Character of Service of Under Other Than Honorable Conditions, a Narrative Reason of In Lieu of Trial by Court Martial, 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 31 July 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? Yes. On the DD293 application, the Applicant contended, "After the death of my father in 2013, my separation and divorce that soon followed, and then the false accusations made by my ex-wife which resulted in me being imprisoned for 8 months before the charges were dropped, I was not in a mental state of mind to make logical decisions regarding my military discharge. I was very depressed, attempted to take my life multiple times, and felt totally alone and picked on. In addition to an Alcohol Induced Mood Disorder, he received a diagnosis of Adjustment Disorder with Depressed Mood. Later, he received a diagnosis of Depressive Disorder, NOS. The Applicant also completed an ADAPT evaluation where he met criteria for Alcohol Abuse and was enrolled in Level 1 treatment. Towards the end of his military career, he was diagnosed with Major Depressive Disorder.

2. Did that condition exist/experience occur during military service? Yes. A review of available records revealed the Applicant first contacted mental health services in April 2013 with a single walk-in visit to the Mental Health clinic due to multiple life stressors. Approximately 3 months after this one-time visit, the Applicant was brought to the Emergency Department (ED) at Tripler Army Medical Center after he attempted suicide by cutting his left forearm and ingesting approximately 14 cold medicine (coricidin) pills. The Applicant described multiple stressors to include work, his marriage, and his father's terminal illness. The Applicant was admitted to Tripler's inpatient psychiatric unit for three days and was diagnosed with Alcohol Induced Mood Disorder and Alcohol Abuse.

Following his discharge, the Applicant met with both mental health and ADAPT personnel. He did not meet criteria for a substance use disorder, but the mental health provider diagnosed the Applicant with Adjustment Disorder with Depressed Mood.

One year after the Applicant's first psychiatric hospitalization, he had his second hospitalization in June 2014. The Applicant was brought by leadership to the Tripler ED due to a suicide attempt via overdose. Following discharge from the inpatient unit, the Applicant re-engaged with Mental Health and was diagnosed with Depressive Disorder, NOS. The Applicant also completed an ADAPT evaluation where he met criteria for Alcohol Abuse and was enrolled in Level 1 treatment.

The Applicant was psychiatrically hospitalized on two more occasions: August 2014 and September 2014. The Applicant was hospitalized for 11 days during their fourth and final hospitalization during their time in service. This longer stay was due to being informed leadership was going to place him in Pre-Trial Confinement and him then voicing he would not be safe if he left the ward. The Applicant was diagnosed with Major Depressive Disorder during both inpatient stays.

3. Does that condition or experience actually excuse or mitigate the discharge? Yes. The "Kurta Memo" requires the board to consider "[c]onditions or experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge."

A review of available records revealed ample evidence that the Applicant was dealing with significant mental health issues during his time in service, as evidenced by his four inpatient hospitalizations for suicidal ideation and/or suicide attempts. The Board has no doubt that some of the Applicant's mental health conditions were a mitigating factor to the Applicant's misconduct. Were the Applicant to provide additional information to substantiate his contentions, he could exercise his right to reapply for relief or appeal, as allowed by regulation.

4. Does that condition or experience outweigh the discharge? No. The Board considered that the "Kurta Memo" states "[i]n some cases, the severity of misconduct may outweigh any mitigation from mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment." The Board found the mitigation resulting from Applicant's condition was outweighed by the severity of his willful misconduct, which included sexual assault.

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 18 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