

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

**CASE NUMBER
FD-2020-00651-2**

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 4 June 2020 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 (Drug Abuse), and a Reentry Code of 2B, as reflected on the DD Form 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 27 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 contend that a condition or experience may have excused or mitigated their misconduct or discharge?

Through counsel, the applicant contended his separation was unjust because it was, “based upon the results of an unconfirmed drug screen performed for a purely medical purpose, which the Command is prohibited from using to substantiate misconduct, the results of which were reported to respondent’s change of command in direct violation of applicant’s rights under HIPAA.” The applicant made no claims or contentions that a mental health condition caused or substantially contributed to his discharge. However, since a review of available records revealed contact with Mental Health services, liberal consideration will be applied to applicant’s case/request.

2. Did that condition exist/experience occur during military service?

A review of available records revealed the applicant made no claims or contentions that a mental health condition caused or substantially contributed to his discharge. The applicant’s record revealed applicant did engage in mental health services while in service. The applicant was diagnosed and treated for Attention Deficit Hyperactivity Disorder (ADHD), predominately inattentive presentation. The applicant was also referred to ADAPT after his positive urine drug screen within the military treatment facility. The applicant did not meet criteria for substance use disorder and completed substance education. Based on a review of available records, there is no evidence a mental health condition caused or contributed to the misconduct that led to the applicant’s discharge.

3. Does that condition or experience actually excuse or mitigate the discharge?

A review of applicants’ DD214 revealed applicant was discharged with an Under Honorable Conditions (General) characterization for Misconduct (Drug Abuse) with 2 years, 8 months, 16 days of military service. The applicant, through counsel, made no contentions that a mental health condition caused or substantially contributed to his discharge. The application of liberal consideration did not reveal any evidence to support that a mental health condition caused, substantially contributed to, or mitigated the applicant’s discharge. The applicant, through counsel, contended there was impropriety in his discharge. Specifically, applicant contended that the results of a drug screen for medical purposes were provided to applicant’s unit, in violation of HIPAA. This information was then used to initiate an investigation that relied on both the unconfirmed medical lab result, and the information command only had due to the HIPAA violation, to substantiate the misconduct that ultimately led to applicant’s discharge. 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.

The applicant’s contention of impropriety hinges on the release to his command of the medical positive urine drug screen finding. However, DoDI 6490.08 (Command Notification Requirements to Dispel Stigmas in Providing Mental Health Care to Service Members) Section 3 describes exigent circumstances authorizing command notification. One of these circumstances is ‘Harm to Mission’ and relates to situations when a provider believes there is serious risk of harm to a specific military operational mission. The instruction notes serious risk may include disorders that significantly impact impulse control, insight, reliability, and judgment. The release by medical personnel of applicant’s positive cocaine lab result to command that was more than 13 times higher than the threshold for detecting cocaine, would meet the exigent circumstance outlined above. Cocaine use by an F-35 crew chief (applicant’s position at the time of misconduct) would certainly impact applicant’s impulse control, reliability, and judgment and likely result in serious risk to specific military operational mission of the maintenance and operational integrity of F-35 aircraft applicant was responsible for. Thus, a review of all available records revealed no evidence of impropriety in applicant’s discharge.

4. Does that condition or experience outweigh the discharge?

Based on a review of all available records, there was no evidence of impropriety or inequity in applicant’s discharge. Further, review of records found no evidence of a mental health condition causing, contributing, or mitigating applicant’s discharge. Therefore, it cannot outweigh the 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 27 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