

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

**CASE NUMBER
FD-2020-00774-2**

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 relief, 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 25 June 2019 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 submitted the following new evidence: DD Form 214, VA Rating that shows a service connection of adjustment disorder, two pages of medical records that show adjustment disorder and school transcript record.

FINDING: The Board was conducted on 17 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? *On the DD293 application, the Applicant contended, "I am requesting an upgrade in character of service, from general to honorable discharge for the following reasons. During my service my mental health was progressively getting worse due to spouse issues but never affected my ability to do my job. Without minor infractions I was seen as a hard worker and an airman that could be depended on for the mission at hand, which allowed me to achieve the AF Good Conduct Medal. The main reason behind requesting an upgrade is that I believe through the hard and consistent work I put into the military that I am able to receive the post 9/11 GI Bill that I will need to follow my dreams of becoming a pilot. I truly believe that I have proven myself to receive an upgrade." In addition, the Applicant marked Other Mental Health as an issue/condition related to their request.*

2. Did that condition exist/experience occur during military service? *A review of available records revealed the Applicant's contact with Mental Health related services was limited to the final ten months of his time in service. The Applicant was initially referred to the Family Advocacy Program (FAP) in August 2018 following a domestic incident between him and his spouse during which the Applicant brandished a weapon. Although the case ended up not meeting criteria at the Central Registry Board, the Applicant did agree to participate in Change Step, a domestic violence offender treatment group. The Applicant attended a total of 4 group sessions between September and December 2018. Also in August 2018, the Applicant contacted the Mental Health clinic wanting to be seen for therapy for relationship issues. The Applicant was referred to and quickly met with the Internal Behavioral Health Consultant (IBC). At this appointment, the Applicant was diagnosed with Partner Relational Problem, was provided with material on communication skills, and a plan to meet again in 2-3 weeks. However, this was the last time the Applicant met with the IBC provider. In November 2018, the Applicant had a PHA appointment where they mentioned previous FAP involvement and that the case was closed. The Applicant reported that, at the time of the incidents that led to their FAP referral, they were experiencing symptoms of depression to include feeling down and little interest in activities. However, the Applicant was clear to the PHA provider that he was not experiencing these symptoms now and denied the need for mental health services or a mental health referral. The Applicant's next contact with mental health occurred in April 2019 as a walk-in to the Mental Health clinic who presented with problems related to marital issues. The provider diagnosed the Applicant with Partner Relational Problem, and noted they seemed to have difficulty accepting their role in their domestic violence incidents. Although encouraged to continue treatment, the Applicant's next contact with mental health was as a walk-in in late May 2019. At this contact, the Applicant reported they were feeling overwhelmed with recent news that they would be administratively separated from the Air Force. This led to an added diagnosis of adjustment disorder with Depressed Mood. The Applicant did not return for further treatment and was discharged approximately one month later.*

3. Does that condition or experience actually excuse or mitigate the discharge? *A review of the Applicant's DD214 revealed they were discharged with an Under Honorable Conditions (General) characterization for Misconduct (Minor Infractions) with 3 years, 1 month, 16 days' time in service. A review of available records revealed evidence that the Applicant's contact with mental health services was largely limited to behaviors associated with domestic violence incidents between the Applicant and their spouse. A walk-in to the mental health clinic occurred one day after being offered an Article 15 for the latest domestic violence incident, where the Applicant became physical with their spouse and was charged with Domestic Battery, First Degree and arrested by local police. The Applicant marked Other Mental Health as being associated with their request and contended his 'mental health was progressively getting worse due to spouse issues but never affected my ability to do my job.' A review of available records revealed evidence that provided some support for this contention. Specifically, the Applicant only presented to mental health providers after he had engaged in several instances of both domestic violence and disobeying No Contact Orders related to his spouse, and essentially all the Applicant's misconduct was related to these same issues. A review of available records revealed that the Applicant was discharged for misconduct related to domestic violence perpetrated against their spouse, and the Applicant clearly described that it was this marital discord that led to his reported mental health problems. Therefore, the Applicant's contended mental health condition or experience does excuse or mitigate the misconduct as the marital discord and associated misconduct that led to the discharge predated the Applicant*

experiencing mental health symptoms, seeking mental health services, and being diagnosed with a mental health condition.

4. Does that condition or experience outweigh the discharge? *The Board reviewed available records and determined whether the Applicant's mental health condition or experience did not outweigh the discharge given the timing of the mental health conditions and the serious nature of the offenses.*

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 the discharge was more than 15 years ago, the Applicant 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
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