

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

**CASE NUMBER
FD-2021-00690-2**

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 2 June 2021 in accordance with Air Force Instruction, 36-3207, Separating Commissioned Officers, with a Character of Service of Under Honorable Conditions (General), and a Narrative Reason of Misconduct (Drug Abuse), 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 submitted the following new evidence: a VA disability benefit letter showing a combined rating of 80% and a police report documenting that she was the victim of a first degree robbery.

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 was robbed at gunpoint near his home in St. Louis on 02 July 2020. He was also chased by them and had a gun pointed at his head. He initially believed he was fine but did notice certain changes in his behaviors after this incident. She had sleep issues shortly after this incident consisting of nightmares, had woken up in a panic, was drenched in sweat, and was unable to think clearly. He claimed he informed his medical provider of some of his symptoms and was advised documenting his symptoms would be a career-ender for his career field. He chose to avoid the issue by self-medicating himself with alcohol and marijuana. Drinking initially helped him with his sleep due to his other medical issues, this was not a viable option. He turned to marijuana and claimed it helped him sleep and alleviated his symptoms. He claimed no one knew of his mental health issues or his self-medicating solution. He eventually failed a urinalysis in January 2020 and claimed he doubled down on hiding his issues by claiming he had inadvertently inhaled marijuana via a small vape pen at a party. In his mind, any drug abuse punishment or service separation would be better than getting seen for a traumatic event. He was administratively separated on 02 June 2021.*

2. Did that condition exist/experience occur during military service? *The applicant submitted a police report from the St. Louis Metropolitan Police corroborating his report that he was robbed at gunpoint—he had a handgun pointed at him twice and the two suspects took his wallet. The report identified the incident that occurred on 30 June 2019 whereas the applicant identified the incident that occurred on 02 July 2020 in his petition. These are two different dates but nonetheless, there is evidence his traumatic experience of being robbed and held at gunpoint had occurred during his military service. There is, however, no evidence or records to support that he developed a mental health condition from this traumatic experience as he contended. He deferred and later declined an evaluation from ADAPT following his positive urinalysis for marijuana. An ADAPT provider consistently followed up with him biweekly for evaluation deferment check-ins, and he consistently denied having any mental health issues. A telephone conversation with the applicant on 17 April 2020, specifically stated, “Pt [patient] denied any mental or emotional problems at this time.” He completed an annual periodic health assessment from his PCM on 15 September 2020 and denied having any mental health issues including having no anxiety, depression, sleep problems, and trauma- and other stressor-related or Posttraumatic Stress Disorder (PTSD) symptoms and alcohol abuse issues. He received a separation history and physical examination from his PCM on 26 October 2020 and again denied having any mental health issues. He was medically cleared to separate. There are records that the applicant had sleep problems and had requested and received short-term sleep medications of Ambien or Restoril, and Zolpidem in May 2017, February 2019, April 2019, and November 2019. Most of his prescriptions and sleep aid use had occurred before his traumatic robbery incident in June 2019, indicating that he had sleep problems before his traumatic experience. He was given a diagnosis of Circadian rhythm sleep disorder by his PCM and this occurred before his traumatic experience. He did use a sleep aid, Zolpidem, again in November 2019 after his traumatic experience but it was for short-term use, and no records reflect that he received any refills of this medication or that he had recurring or increased sleep problems after his traumatic experience. There are no records that he coped with his sleep problems with alcohol as claimed. There are no records the applicant received any mental health evaluation, treatment, or mental disorder diagnosis including anxiety, depression, sleep disorder, alcohol abuse, and PTSD from the VA. The applicant had submitted a letter from the VA dated 23 November 2021 reporting he has received an 80% disability rating but the condition(s) for which he was rated was not identified in the letter.*

3. Does that condition or experience actually excuse or mitigate the discharge? *While it is possible that the applicant had coped with his traumatic experience of being robbed at gunpoint with marijuana, there is no evidence that he had developed a mental health condition or was mentally distressed which caused him to seek marijuana to cope. It is acknowledged that the applicant was fearful of disclosing and admitting that he had mental health issues, but he did consistently deny to numerous providers during service including to his PCM, flight surgeon, and ADAPT provider that he did not have any mental health issues. Even if he did not openly report his problems, there could be other clues that would suggest he was affected by his traumatic experience such as significant behavioral changes that he contended experiencing. There is no evidence of any significant*

behavioral changes in the applicant since his traumatic experience. There is no evidence and records that he had nightmares, sleep disturbances, poor attention and concentration, poor memory, decreased mood, anxiety, alcohol abuse issues, changes in appetite and weight, etc. that would be indicative of an individual who has experienced or had been impacted by a traumatic experience. For these reasons, his mental health condition or traumatic experience does not excuse or mitigate his discharge.

4. Does that condition or experience outweigh the discharge? *Since his mental health condition does not excuse or mitigate his discharge, his mental health condition or traumatic experience also does 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 voted unanimously to deny the Applicant's original request to upgrade their Narrative Reason/SPD Code. Therefore, the Narrative Reason shall remain.

Reentry Code: Not Applicable for commissioned officers.

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://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