

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

**CASE NUMBER
FD-2022-00076-2**

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 19 March 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 Pattern of Misconduct, and a Reentry Code of 4D, 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 8 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? The applicant selected "Other Mental Health" on his application, DD Form 293, and contended that with recent changes in the

December 21, 2020, memorandum regarding the involvement of discipline within the squadron and its airmen, he felt his case was handled with unfair bias. He requested a character upgrade due to his lack of disciplinary history. His infractions came from a break in mental health for which he was diagnosed by the VA. He served honorably throughout his time in service, but he lacked the mental strength to obtain help from counseling at the time. He had learned how to cope and understand the severity of keeping his mental health in order. The applicant did not clarify his mental health condition or disorder in his petition.

2. Did that condition exist/experience occur during military service? A review of the applicant's available service treatment record revealed he briefly sought mental health treatment in June 2017 for experiencing anxiety and depression caused by family problems. He attended two individual psychotherapy sessions after completing an intake evaluation for treatment services for these problems. He stopped attending treatment because his symptoms were noted to be decreased or improved. He was given a diagnosis of Problems of Adjustment to Life-Cycle Transitions. The following year in April 2018, he completed an intake evaluation with the Family Advocacy Program (FAP) due to allegations of family maltreatment, physical and emotional maltreatment, occurring while he was on leave. He was noted to be the offender/perpetrator. He was reported to have been feeling anxious, worried, and stressed as a result of his situation. He would participate in FAP's program and group treatment for almost a year ending in March 2019 because he was discharged from service. His FAP closure notes reported that although he received some treatment from FAP, he remained guarded and has had multiple maltreatment allegations. His case was unresolved at the time of chart closure.

3. Does that condition or experience actually excuse or mitigate the discharge? The applicant was discharged from service for misuse of his government travel card for personal purchases and expenses, failing to pay his credit card debt, failing to report to duty, failing to appear to his civilian court date, was arrested for communicating a threat to an off-duty police officer and disorderly conduct in a public place and failed to report his arrest to his chain of command, was involved in a domestic violence situation with the mother of his child and was arrested for battery, and shoplifting for which he failed to report his arrest to his supervisor. There is no evidence that the applicant had a mental health condition at the time of any of these acts of misconduct or that his misconduct was caused by having a mental health condition. He did receive brief mental health treatment before his misconduct occurred, but his symptoms were noted to be improved. Moreover, anxiety and depression do not typically cause these types of behaviors, nor would they excuse or mitigate his serious misconduct, especially his illegal activities. He had engaged in some serious misconduct and violent offenses, resulting in numerous arrests by civilian law enforcement authorities, and again, no evidence that his mental health condition caused any of his misconduct. Therefore, his mental health condition does not excuse or mitigate his discharge.

4. Does that condition or experience outweigh the discharge? The board members reviewed the available records and determined the applicant's mental health condition does not outweigh his discharge. His acts of misconduct were serious offenses and too egregious to outweigh his discharge by having a mental health condition.

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 two to one 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 two to one to deny upgrading the Narrative Reason/SPD Code. Therefore, the Narrative Reason shall remain.

Reentry Code: The AFDRB also voted two to one to deny upgrading the Reentry Code. Therefore, the Reentry Code shall remain.

The Board President approved the results of the AFDRB on 8 July 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

Attachment: Director's Memorandum, dated 2 September 2025



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

September 2, 2025

MEMORANDUM FOR PRESIDENT, AIR FORCE DISCHARGE REVIEW BOARD

SUBJECT: [REDACTED], AFDRB Case Number FD-2022-00076-2

Having considered the decision of the Air Force Discharge Review Board (AFDRB) without participation of the Applicant or Applicant's counsel for consideration as the Secretarial Reviewing Authority (SRA), I have reviewed both the Board majority and minority decision in subject case, and under authority delegated by the Secretary, I join with the minority in concluding there was sufficient evidence to determine if the discharge met the pertinent standards of equity and propriety.

In particular, the minority notes the applicant's contentions of a mental health condition, including PTSD, TBI, sexual assault, and/or sexual harassment met the requirements of the "Kurta Memo" to grant relief on the basis of Liberal Consideration.

Therefore, I conclude the evidence does support granting relief, and so direct the application be approved as follows:

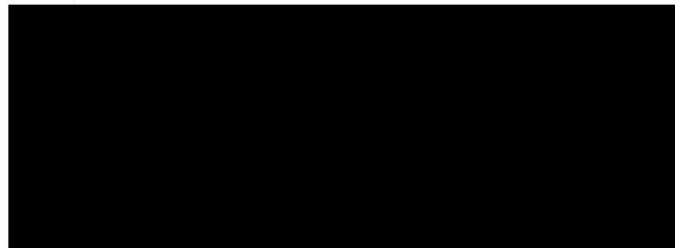
The Character of Service: I agree with the minority approving Applicant's original request to upgrade their Discharge Characterization. Therefore, the Character of Service shall change to Honorable.

Narrative Reason/SPD Code: I agree with the minority approving Applicant's original request to upgrade their Narrative Reason/SPD Code. Therefore, the Narrative Reason shall change to Secretarial Authority.

Reentry Code: I agree with the minority approving Applicant's original request to upgrade their Reentry Code. Therefore, the Reentry Code shall change to 3K.

This decision shall be appended as an addendum to the decisional document.

9/2/2025



Director
Air Force Review Boards Agency