

**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 11 March 2020 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; 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 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, 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. If 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 submitted as part of the Settlement Agreement. In this case, the Applicant did not submit any new evidence.

**FINDING:** The Board was conducted on 30 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 that the evidence did not support an 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. The Applicant's legal counsel on behalf of the Applicant marked "PTSD" and "Other Mental Health" on his application, DD Form 293, and contended that the Applicant's discharge was unjust because his mental health mitigates his misconduct while on active duty. His legal counsel explained that in 2018, his wife left him and he was injured in a car accident, causing him to seek counseling with the Military Family Life Counseling (MFLC). He would continue to struggle with his mental health and began to self-medicate with alcohol, causing his DUI [Driving Under the Influence]. The other incident that caused his discharge occurred in 2019. The Applicant was placed under investigation due to a false claim made by another airman that the Applicant pointed and cocked a gun at him, and he was charged with aggravated assault with a weapon. The Applicant explains his mental health had a big influence on his decision to accept a discharge in lieu of a court-martial because he had severe anxiety and a lack of confidence in his ability to get through the trial. The Applicant and his legal counsel are requesting that his Under Other Than Honorable Conditions service characterization be upgraded to a General character of service.*

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

*Yes. A review of the Applicant's available service treatment records finds no evidence that the Applicant had any mental health issues, including severe anxiety and PTSD, during service. There are no records, including records from MFLC, verifying that he received any mental health treatment or a mental disorder during service. The Applicant was commander-referred to the Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) in April 2019 following his DUI and repeatedly declined an evaluation from ADAPT by advice of his Area Defense Counsel. Despite his declination of an evaluation, an ADAPT provider would consistently follow up with him bi-weekly about his availability for an evaluation, and the Applicant was reported to have "good" mood and denied having any mental health issues. He never received an evaluation from ADAPT because by the time his investigation was completed, he had declined an evaluation because he was in the process of being discharged. The Applicant had completed a Separation Health and Physical Examination with his primary care manager (PCM) in February 2020, and his PCM reported, "Psychological: No anxiety, no depression, and not thinking about suicide. No homicidal thoughts." No other mental health issues were reported, and he was medically cleared to separate. However, the Board considered that the "Kurta memo" states "Evidence of misconduct, including any misconduct underlying a veteran's discharge, may be evidence of a mental health condition, including PTSD; TBI; or of behavior consistent with experiencing sexual assault or sexual harassment;" and "The veteran's testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigates the discharge." Applying these principles, the Board concluded the Applicant had a qualifying condition.*

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

*Yes. The Applicant was discharged from service in lieu of a court-martial for referred charges of operating a vehicle while drunk (DUI) and pointing a loaded firearm at an airman that could have caused death or grievous bodily harm to the airman. In accordance with the "Kurta memo" the Board recognizes that liberal consideration includes "Conditions or experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge;" and "Mental health conditions, including PTSD; TBI; sexual assault; and sexual harassment inherently affect one's behaviors and choices causing veterans to think and behave differently than might otherwise be expected." Consequently, the Board finds there may be some mitigation of the discharge.*

4. Does that condition or experience outweigh the discharge?

*No. The "Kurta memo" recognizes that "In some cases, the severity of misconduct may outweigh any mitigation from mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment." The Board reviewed the available records, applied liberal consideration, and determined that the Applicant's mental health condition of severe anxiety and PTSD does not outweigh the Applicant's basis for separation. The severity of the Applicant's misconduct resulting in his discharge in lieu of a court-martial outweighs his mental*

*health condition and does not support his request for an upgrade to a General (or Honorable) character of service. The Applicant's charged misconduct was for operating a vehicle while drunk and wrongfully and recklessly pointing a loaded firearm at another Airman, conduct likely to cause death or grievous bodily harm. Consequently, the Board was not persuaded that Applicant's condition outweighed 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 voted unanimously to deny the Applicant's original request to upgrade their 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 17 October 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