AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT FOR *JOHNSON et al. v. KENDALL* CASE No. 3:21-cv-01214	CASE NUMBER FD-2023-00604-2

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 23 May 2023 in accordance with Air Force Instruction, 36-3207, Separating Commissioned Officers, with a Character of Service of Under Honorable Conditions (General), a Narrative Reason of Unacceptable Conduct, and a Reentry Code of N/A 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?
The applicant checked the box for "sexual assault/harassment" on the application. The applicant contended "I am requesting that the board upgrade my character of service from an "under honorable conditions" to an "honorable" discharge, subsequent separation code, and narrative reason for separation. I am asking this due to the fact that the incident driving the separation, Non-Judicial punishment, and other repercussions stemmed from a sexual assault event in Okinawa, Japan while I was serving on active duty. Because I removed myself from the situation, I did not report the sexual assault event to my Commander, the authorities or SAPR personnel and was therefore not considered under the DAF Safe-to Report Policy when undergoing the NJP process."

2. Did that condition exist/experience occur during military service?
Available records demonstrate Command referral to ADAPT related to alcohol use on two separate occasions, both related to DUI incidents. In 2020, it appears that the applicant rear-ended a Japanese National's vehicle after leaving a beach party. After this event, her driving privileges were restricted. In 2022, the applicant left a colleague's home with concern for a situation escalating towards sexual assault, and struck multiple Japanese Nationals' vehicles, injuring one person. Her response to the LOR noted that she could have called a taxi or friend for a ride, but she was concerned for her "mental and physical health, as well as the reputation of both parties involved."
In both cases, the ADAPT referral resulted in a medical opinion that the applicant did not meet criteria for an alcohol related diagnosis.
Without minimizing the concerns of the moment, there does not appear to be an episode of sexual assault, only an episode of concern for the possibility. However, this concern occurred during her military service. There is no evidence in available records that the applicant sought or was directed to receive mental health treatment during their time in service other than ADAPT. She did not report any concerns of sexual assault.

3. Does that condition or experience actually excuse or mitigate the discharge?
A review of the applicant's DD214 revealed the applicant was discharged with a general character of service due to unacceptable conduct with six years time in service. The applicant's discharge package was not available for review.
There does not appear to be a connection between the misconduct, namely misuse of alcohol not meeting criteria for an alcohol-related diagnosis and resulting in DUI, which began at least by 2020 and the episode of concern for sexual assault, which occurred in 2022. However it is noted that the concern is contemporaneous with the second incident of alcohol. It's also important to note that premeditated misconduct and misconduct involving harm to others is generally excluded from the intent of liberal consideration, which would apply to the first incident referenced. There is no evidence of an actual concern but just speculation surrounding the second alcohol-related incident. Thus the applicant's discharge is not mitigated or excused.

4. Does that condition or experience outweigh the discharge?
Because the applicant's discharge is not mitigated nor excused, the applicant's discharge is also not outweighed. The severity of the misconduct outweighs speculation/reports made later about a potential for sexual assault.

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 voted unanimously to deny the Applicant's original request to upgrade their 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
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