

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 16 May 2022 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 (Drug Abuse), and a Reentry Code of 2B, 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; 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 as part of the Settlement Agreement. The Applicant did not submit new evidence.

FINDING: The Board was conducted on 24 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 marked "PTSD" on his application, DD Form 293, and contended his discharge was improper due to the significant impact of PTSD, anxiety, and difficulties adjusting to his environment. These symptoms were exacerbated by the treatment he received from individuals in his career field causing him to feel depressed, unheard, and struggling to find support within his chain of command. He also contended due to the negligence of his chain of command, he received racist and unfair treatment and this gave him PTSD, anxiety, and adjustment issues for which he spoke about with mental health.

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

Yes. A review of the applicant's available service treatment records revealed he intermittently sought and received mental health treatment during service beginning in September 2018 and ending in March 2022, primarily for anxiety, depression, and sleep issues caused by occupational problems, financial issues, and relationship stress. His treatment records indicated he was not engaged in therapy and missed several appointments, but his anxiety and depressed mood were improved with the use of psychotropic medications. He had complaints about having poor concentration/ADHD symptoms that he reported had begun in childhood and received two evaluations, including a requested second opinion, to confirm a diagnosis of ADHD. He was assessed to not meet the diagnostic criteria for ADHD. It was noted he had subclinical symptoms of ADHD and stimulant-seeking behaviors for ADHD medication and was denied, especially after a positive drug test for cocaine. He was commander referred to ADAPT following his positive drug test for cocaine and completed an evaluation in September 2021. He was assessed to not meet the criteria for any Alcohol Use Disorder but did not mention any Substance Use Disorder diagnosis. He was recommended to complete two educational sessions at ADAPT but completed only one hour of the educational class. He requested his ADAPT services be closed in January 2022 because he was being discharged. He presented to the mental health clinic one last time before he was discharged in March 2022 with reports that he did not feel he had a purpose at the time as he was anticipating being discharged but had not received separation orders yet. He also had trouble sleeping and getting out of bed and bad dreams. He reported having low motivation but was motivated to get treatment for ADHD. He was diagnosed with Demoralization and Apathy, Stress, Not Elsewhere Classified, Adjustment Disorder with Depressed Mood, Adjustment Disorder with Anxiety, Adjustment Disorder with Mixed Anxiety and Depressed Mood, Other Physical and Mental Strain Related to Work, and Other Specified Problems Related to Psychosocial Circumstances during service.

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

No. The applicant was discharged from service for wrongful use of cocaine between 16 July 2021 and 30 July 2021. A review of his service treatment records finds that although he did receive intermittent mental health treatment for anxiety, depressed mood, and sleep problems caused by his work, financial, and relationship stress, there is insufficient evidence that his mental health condition caused him or contributed to his decision to use cocaine. There is insufficient evidence he used cocaine to cope with his mental health condition and even if he did hypothetically, cocaine is a hard and serious drug, and his misconduct would not be excused or mitigated by his mental health condition. He was offered mental health treatment, and his anxiety and depression symptoms were reported to have been improved with evidenced-based and approved psychotropic medications, but he was not amenable or consistent with treatment. He was noted to have exhibited drug-seeking behaviors during service, especially for ADHD medication and other stimulants, despite not meeting the diagnostic criteria for ADHD. This behavior indicated he most likely had drug abuse problems, and this is an unsuiting mental health condition for military service. For these reasons, the applicant's mental health condition does not excuse or mitigate his discharge from service for cocaine use.

4. Does that condition or experience outweigh the discharge?

No. The Board reviewed the available records and determined that the applicant's mental health condition does not outweigh his 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 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 27 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