

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. 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 5 June 2020 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 (Minor Infractions) and a Reentry Code of 4H, 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. 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. In this case, the Applicant submitted a copy of his DD 214.

FINDING: The Board was conducted on 23 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?

No. On DD293 form, the Applicant contended, "I was discharged from the Air Force in June of 2020 due to the allegations of me smoking an illegal substance. I was in fact guilty. I later on found out I had severe migraines and that I was dealing with depression. I wasn't aware of this while I was in the military. While I was in the military I was highly motivated to finish a task on time, this carried over to the civilian side as well. I began coaching the men's basketball team at MacDill AFB. While coaching the team I led multiple toy and food drives to help the Tampa community. I'm looking to upgrade my discharge due to the fact that I have learned from my mistakes and continue to strive to be the best I can be." The Applicant also marked PTSD on the DD293 form as an issue/condition related to their request.

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

No. A review of the available records revealed the Applicant had very little contact with mental health related services during their time in service. Specifically, the Applicant met with BHOP on two occasions for two different reasons, separated by six months. The Applicant initially met with the BHOP provider in November 2019 regarding stress related to relationship concerns. At this appointment, the Applicant received a diagnosis of Problems in Relationship with Spouse or Partner. The Applicant only saw the BHOP provider one time after they received stress management materials.

The Applicant next met with the BHOP provider in May 2020. The Applicant had contacted the Mental Health clinic seeking an appointment due to stress and decreased sleep. The Mental Health clinic booked the Applicant the appointment with BHOP. The BHOP provider provided materials and education on stress management. The BHOP provider used the Applicant's medical diagnosis of Type 1 Diabetes for this appointment as the Applicant's stress was largely associated with their recent diabetes diagnosis.

The Applicant contended migraines, depression, and PTSD as factors associated with their discharge and request for upgrade. A review of available records revealed evidence the Applicant sought treatment for a headache one occasion, when they were at BMT. The provider diagnosed the Applicant with a tension headache and put the Applicant on 24 hours of quarters. There is no further mention of headaches in the available records during the Applicant's time in service. Additionally, a review of records found no evidence to support that diagnoses of depression or PTSD, or any similar diagnoses were made or considered by medical personnel during the Applicant's time in service.

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

No. A review of the Applicant's DD214 revealed the Applicant was discharged with Under Honorable Conditions (General) characterization for Misconduct (Minor Infractions) with 1 year, 11 months, 24 days of service. A review of the Applicant's discharge package revealed the evidence cited by command to support the discharge included: an Article 15 for possession of marijuana; an Article 15 for a verbal altercation and associated assault with another service member; an LOR for two instances of failing to go to place of duty; and an LOC for failing to go to place of duty. Additionally, after being served with their discharge notification, the Applicant received an Article 15 for larceny.

A review of available records revealed no evidence to support the existence of a condition or experience that could excuse or mitigate the Applicant's discharge. As previously noted, the Applicant's only mental health related condition was Problems in Relationship with Spouse or Partner. This is considered a focus of treatment and not a mental health condition or diagnosis and is not a factor that could excuse or mitigate the Applicant's discharge, or the misconduct that led to their discharge.

The Applicant asserted in the narrative portion of the DD293 that they had 'severe migraines and depression' during their time in service. A review of available records revealed no evidence to support these conditions were diagnosed, or considered for diagnosis, during the Applicant's time in service.

On the DD293 form the Applicant marked PTSD as being an issue/condition related to their request. However, a review of available records revealed no evidence that a PTSD diagnosis was considered or given to the Applicant either during their time in service or after their time in service.

Regarding the Applicant's contentions regarding severe migraines and depression, a review of records revealed evidence the Applicant has received a service-connected disability rating from the VA for Chronic Migraines

and for Chronic Adjustment Disorder. The VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the 'snapshot in time' of the Applicant's service, there is no evidence the Applicant had a mental health condition that caused or mitigated the misconduct that led to the Applicant's discharge.

4. Does that condition or experience outweigh the discharge?

No. Since the Applicant's condition or experience does not mitigate their discharge, it also does not outweigh their 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 18 September 2025.

Should the Applicant wish to appeal this decision, he may request a personal appearance before this Board. An Applicant must be within 15 years of discharge. If the discharge was more than 15 years ago, the Applicant 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