

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 August 2023 in accordance with Department of the Air Force Instruction 36-3211, Military Separations, 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 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 4 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 did not find 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 "OTHER MENTAL HEALTH" on his application, DD Form 293, and contended that he joined the military in 2009 after having his son and wanted to go into special operations and fight for his country. Unfortunately, he was washed out of the last course of the EOD program and was washed into COMNAV. Although he felt his dreams were crushed, he was able to work hard and excel. In April 2022, he took a deployment with the hopes of "ranking up quicker" to retrain to EOD. Once he returned from deployment, he received news that he was no longer allowed to retrain. He was devastated and dug himself into depression. He went back home in April and made a "silly mistake" that ultimately removed him from the Air Force. He reiterated that he had made a mistake and was doing everything he could to make things right. He received his real estate license and is working on his goal to become a firefighter.

2. Did that condition exist/experience occur during military service? Yes. Based on the statements of applicant the board found his depression occurred during service.

3. Does that condition or experience actually excuse or mitigate the discharge? No. A review of the applicant's available records finds the applicant first reported having any mental health concerns and received brief mental health counseling after it was discovered he had a positive UA. Prior to his drug use/positive UA, he denied having any mental health issues on his numerous PHAs. He contended in his petition that his marijuana use was "a silly mistake," indicating that it was a one-time use. However, his discharge paperwork, Notification Memorandum dated 13 July 2023, reported that he wrongfully used Delta-9 Tetrahydrocannabinol (Delta-9 THC or THC 9) between on or about 04 April 2023 and on or about 25 April 2023 and wrongfully used Delta-8 THC (THC 8) between on or about 03 May 2023 and on or about 10 May 2023. These timelines indicate he used illicit drugs on more than one occasion. He also disputed using Delta-8 and Delta-9 a second time in his rebuttal to his LOR dated 16 June 2023 and could not explain why his Bickel test came back positive with a higher level of Delta-8/THC 8 present. He reported that during his ADAPT evaluation, he used marijuana/cannabis "to give it a try for the first time," and no evidence that he used marijuana to cope with having a mental health condition or depression at the time of use. It is acknowledged that the applicant reported in his response to his notification memorandum dated 18 July 2023 that he had been going through several issues since April 2022, and his action was the result of those issues. His issues were not clarified in his statement. He claimed he was diagnosed with Major Depressive Disorder and Adjustment Disorder with Anxiety on 07 July 2023, but there is no evidence or medical records to confirm this report. He did meet with his PCM on 05 July 2023, two days before this date, and he screened negative for depression. There is no evidence he was in emotional distress or had a mental health condition impairing his judgment at the time he decided to use marijuana. For these reasons, his mental health condition does not excuse or mitigate his discharge.

4. Does that condition or experience outweigh the discharge? The Board Members concur with the opinion of the Board's Mental Health Advisor, a voting member. Also, the Board reviewed the available records, applied liberal consideration, and determined that the applicant's mental health condition does not outweigh the applicant's basis for separation. The severity of the applicant's misconduct resulting in his discharge outweighs his mental health condition and does not support his request for an upgrade to Honorable.

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 voted two to one 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 two to one 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 30 November 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