

Department of the Air Force to Review Discharges of Veterans with Mental Health Conditions & Experiences of Sexual Trauma

NEW HAVEN, CT – The Department of the Air Force (DAF) has agreed to review the discharges of thousands of veterans affected by post-traumatic stress disorder (“PTSD”), Traumatic Brain Injury (“TBI”), or other mental health conditions, or who experienced sexual assault or sexual harassment. The DAF will also implement administrative reforms for individuals who apply to have their discharge statuses upgraded in the future. These reforms follow a settlement reached in the nationwide class action *Johnson v. Kendall*, brought by Air Force veterans Martin Johnson and Jane Doe.

Under the settlement, the Air Force Discharge Review Board (AFDRB) will automatically reconsider decisions on applications received between September 13, 2015 and the effective date of settlement, in which the AFDRB denied the discharge upgrade requests of veterans who claimed their mental health conditions or sexual assault or sexual harassment experiences caused their characterization of service to be Under Honorable Conditions (General) or Under Other Than Honorable Conditions (UOTHC). The settlement also expands the right to reapply for an upgrade to eligible applicants who were discharged and applied to the AFDRB between September 13, 2006 and September 12, 2015, but received an adverse AFDRB decision.

“I am pleased that the Air Force is taking steps through this settlement to make the AFDRB more accessible to veterans like me who love and have served this country,” said Martin Johnson, an Air Force veteran with PTSD who brought the suit on behalf of the settlement class. “I am glad the Air Force is committed to taking less-than-Honorably discharged veterans’ mental health and trauma seriously.”

“The Department of the Air Force’s actions to resolve this case underscore our continued commitment to provide former Airmen and Guardians fairness, due process, equity, and justice in all cases that are submitted to our review boards,” said Dr. Alex Wagner, Assistant Secretary of the Air Force for Manpower and Reserve Affairs.

The settlement also ensures that Air Force, Air National Guard, Air Force Reserve, and Space Force veterans who submit applications for discharge upgrades in the future will benefit from procedural reforms and new protocols for decision-making in cases involving symptoms or diagnoses of PTSD, TBI, other mental health conditions, or evidence of experiences of sexual trauma. The settlement requires the AFDRB to establish a one-year pilot program giving veterans who claim a mental health condition or experience of sexual trauma, but who fail to submit sufficient evidence of the condition or experience an opportunity to supplement the record; to commit required medical opinions to writing; to provide a phone number for applicants to call with inquiries; to train its members and staff on how mental health conditions can lead to misconduct and how to identify and combat unconscious bias against persons with disabilities or who have had an experience of sexual trauma; to provide a universal video teleconference option for veterans who wish to have a personal appearance but cannot travel to Washington, D.C.; and to advise applicants of their right to request accommodations, including for disabilities.

“The *Johnson* settlement ensures that veterans who develop disabilities because of their service, such as Mr. Johnson and Ms. Doe, receive the support they have earned from the country they gave years of their lives to serve. We are hopeful this settlement will allow the AFDRB to implement the changes needed to allow veterans with disabilities an equal opportunity to apply for benefits they deserve,” said Grace Fenwick, a law-student intern in the Veterans Legal Services Clinic at Yale Law School, which represents the plaintiffs with co-counsel Jenner & Block LLP.

Veterans of the Department of the Air Force who were discharged with less-than-fully-honorable service characterizations while having a diagnosis of, or showing symptoms of, the conditions or experiences listed above may be eligible for relief. Discharge upgrades are not guaranteed, and applications will be decided on a case-by-case basis. Eligible veterans who have been identified by the Department of the Air Force will receive notice of their rights under the settlement. However, Department of the Air Force veterans who do not receive notice may still be eligible for relief.

The full text of the settlement can be found at www.JohnsonAirForceSettlement.com. For more information, please contact the Yale Veterans Legal Services Clinic at johnson.settlement@ylsclinics.org.

Class members may wish to become more active in the lawsuit either through joining the final approval hearing or objecting. The final approval hearing for this settlement will be held on December 4, 2023, and all class members are welcome to join. If class members wish to object to the class, they can do so by filing an objection with the court and voicing their argument in the final approval hearing. Judge Charles S. Haight, Jr. of the United States District Court for the District of Connecticut will take any objections into account when deciding whether to grant final approval of the settlement.