RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD0900087 COMPONENT: active

BOARD DATE: 20090730 SEPARATION DATE: 20030605

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was an E-5 Food Service 92G medically separated from the Army in 2003 after over 6 ½ years of service. The medical basis for the separation was prolonged duty restrictions by profile. The CI had multiple years of profile restriction from prolonged standing, marching, running, or lifting greater than 20 pounds, and could not fire in the prone position. The commander attributed the CI’s duty restrictions to his lower back pain (LBP) and leg pain from bilateral varicose veins. The CI had symptomatic varicose veins beginning in 1998 and had two vein stripping operations that were not fully successful in permanently relieving his symptoms. A vascular surgeon opined that further surgery would not help resolve the leg pain and that the leg pain was more likely caused by the CI’s back condition. The CI’s LBP had begun in 1998 without trauma and was exacerbated in Aug 2002 with radicular symptoms. There were multiple levels of thoracic and lumbar disc desiccation and narrowing of the foramina at L4/5 without frank disc herniation. Due to prolonged duty restrictions, the CI was referred to the PEB, found unfit and separated at 20% disability for his bilateral varicose veins.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI contends for a higher rating for his varicose veins, and addition of new unfitting conditions and ratings for; back pain, hip pain, major depression, Anxiety, sleeping disorder, and Myasthenia with interference of vision. The CI contends that he is unemployable and mentions continued and increased symptoms. ‘I have more problems with my Back and right Hip than I was compensated for and up to today I am still seeing a Psychiatrist and taking medications for Major Depression, Anxiety and Sleeping Disorder.’ ‘I continue to have problems concentrating and focusing on tasks as well as problems with prolonged standing and walking because of my back and Varicose veins. A civilian Ocular Surgeon recently diagnosed me with having Myasthenia and requested that I see a Neurologist for that problem. One of the problems with that is, I developed droopy eyelids which occurred whenever I got tired but now it's daily and continuous. My eye sight is being affected as well and are very sensitive to light, requiring me to wear tinted glasses as a result. My self confidence is also low because I am not able to socialize, everyone stares at me and others make remarks like "he is craze" and are reluctant to sit next to me, which is a very uncomfortable situation and as a result I stay home most of the time contributing to my depression. I spent three and a half years at the Veterans Retirement home in Lawton, Oklahoma from 0412004-10/2007. Since after my ETS from the Army on 06/05/2003, I have only worked for about an hour at KFC as a Manager Trainee but had to quit because I was unable to proceed.’

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA Pre-Discharge Exam** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| BILATERAL LOWER EXTREMITY VARICOSE VEINS, PAINFUL WITH PROLONGED STANDING WITHOUT EDEMA OR STASIS PIGMENTATION.  R ., 10% L 9% " 19% ., NET 20% | 7120 | 20% | 20030411 | Varicose Veins, Left Leg | 7120 | 10% | 20030416 | 20030606 |
| Varicose Veins, Right Leg | 7120 | 10% | 20030416 | 20030606 |
|  |  |  |  | Stenosis and Disc desiccation of T & L Spine | 5293-5292 | 20% | 20030416 | 20030606 |
|  |  |  |  | Depression | 9433 | 30%  50% | 20031204 | 20030811  20050205 |
|  |  |  |  | Hypertension | 7101 | 0% |  | 20030606 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*incl non-PEB Dxs): 40***% from 20030606  **60%** from 20030811  **70%** from 20050205 | | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY:

**Bilateral Lower Extremity Varicose Veins**. The CI presented in 1998 with complaints of bilateral leg pain and dilated blood vessels. He underwent varicose vein stripping in May 1998 and recovered well from that. Following recurrence of varicose veins on the left leg he underwent a second vein stripping in Jan 2000. The CI’s varicosities recurred and began troubling him. He was given a permanent profile in Germany in 2001 with some administrative irregularities. The CI was evaluated by a vascular surgeon at Brooke Army Medical Center in Feb 2002 and the specialist judged that further surgery would not be of benefit. There was a clear link to difficulty performing his MOS (92G cook) due to bilateral leg pain from varicose veins. The NARSUM and treatment records detail tortuous and dilated blood vessels, right greater than the left, in the posterior calf and anterior ankle. There were no areas of phlebitis in the lower extremities, with well-healed post surgical scars on bilateral lower extremities. The medical notes combined with the NARSUM equate to bilateral varicose veins with no persistent edema, no stasis pigmentation, eczema, ulcerations (either intermittent or persistent), or subcutaneous induration and positive for aching or fatigue in leg after prolonged standing or walking, with symptoms relieved by rest, elevation or compression hosiery. Of special note, there is potentially interplay between the CI’s bilateral leg pain with his diagnoses of varicosities and LS spine pathology. The 20030206 vascular surgeon’s note listed impression: "Varicose veins with leg pain not likely to be due to them. Leg pain could also be due to lumbar disc disease. Recommend that the patient follow up with his primary care provider or Neurosurgery to have a complete evaluation of his low back and bilateral leg pain." There are treatment notes following this consult and the MEB NARSUM was performed after this consult was available. The VA pre-discharge exam was similar to the military exams, but also noted presence of pigmentation, which would not change the rating level. Bilateral varicose vein ratings by both the military and VA equate to 10% for each leg combined to 20% and including the bilateral factor.

**Lumbar and Thoracic Spine DJD**. The MEB H&P noted LS DJD as stable with non-detailed exam of FROM, negative straight leg test bilaterally and BLE were grossly neurological and muscular intact and bilaterally symmetric normal strength and reflexes. BMI was 33 kg per meter squared. The CI did say in his MEB H&P history that his lower back pain (LBP) limited his duty as he could not lift more than 20 pounds (agrees with profile). The NARSUM listed Lumbar thoracic degenerative joint disease, stable under ‘All Other Conditions’, and that it was dictated with the CI present. Note from 20020828 indicated non-traumatic back injury with RLE radiculopathy, with other notes indicating LBP onset as early as 1998. MRIs of 20021220 demonstrated; T spine no HNP, but positive multi-level disc desiccation (early DDD). L spine without HNP, noted disc desiccation and L4/5 mild annular bulge with mild bilateral foraminal stenosis, and L5/S1 mild bulge and facet hypertrophy. The CI stated that he could not fire a weapon in the prone position due to his LBP. He was unable to do pushups or sit-ups due to his LBP. He had no limitations in activities of daily living. There were no formal ROMs, and only few historical exams that showed LS spasm. There were numerous complaints in the records of hip back and radicular leg pain. The commander’s memo (20030325) specifically addressed the CI’s back pain and limits due to LBP as interfering with completion of both MOS and normal Soldier duties. ‘DUTY RESTRICTIONS: No standing for greater than 30 minutes per hour. No running, jumping, marching, pushups or situps. Cannot fire weapon in prone position. Cannot wear a backpack. May lift up to 20 pounds. The (CI) is allowed to take the bicycle APFT test.’ Profile restriction due to the LS spine, commander's memo specifically noted duty restriction due to the LS spine, and the long duration profile restrictions attributable to the back indicate that the LS spine should be added as an additional unfitting condition.

The VA pre-discharge exam of 20031204 noted radiated pain on movement of the lumbar spine, positive right straight leg test, and pain-limited on motion. Measurements were Flex 95, Ext 35, R lateral Flex 40, Left Lat Flex 35 and each rotation 35 (each beyond VA normal ROMs; however, the examiner specifically noted that "ROM for the lumbar spine is additionally limited by pain, but not by fatigue, weakness, lack of endurance or incoordination." VA imagining showed degenerative changes and did not significantly differ from military studies. The initial VA rating was under the historic VASRD (no specific ROM degree criteria) 5293-5292, Intervertebral disc syndrome-Spine limitation of motion at the 'moderate' 20% level. Independent rating of that examination shows that it would more appropriately be rated at 10% 'slight' or even more predominately at 10% using §4.59 Painful motion. The VA re-exam of 20070110 was 3.5 years post separation and documented flexion of 65 degrees and combined ROM of 155 degrees (equates to 10% criteria, despite VA 20% rating).

The CI's LS related duty limitations made the CI unfit and LS spine should be added as a new unfitting condition. LS spine was clearly mentioned in the NARSUM (All Other Conditions; Lumbar thoracic degenerative joint disease), as part of the Disability Evaluation System (DES) package, despite not being listed as a separate diagnosis on the front of DA Form 3947, MEB Proceedings. Absent the Army pain rule, the LS spine should be rated at 10% IAW §4.59 Painful motion under the historical VASRD 5292 Spine, limitation of motion, lumbar (equates to 'slight').

**Psychiatric or Mood Disorder (major depression, Anxiety)**. The MEB H&P noted no current mood or psychiatric disorder. The CI did indicate a history of being seen for stress and continued nervous complaints. A Reynolds Army Community Hospital clinic note of 20031002 indicated ‘depression needs better control’ with an increase of Effexor dosage for treatment of depression. The VA rated depression based on an exam of 20031204 (6 months post-discharge) at 30% from the rating decision of 20060919. The diagnosis of either major depression or anxiety disorder was not addressed sufficiently by the NARSUM, MEB or PEB; therefore, despite there being little evidence of its unfitting nature at the time of discharge, it is beyond the scope of the PDBR to either exclude or add these mental health conditions as fitting or unfitting. The CI should be referred to the Army Board of Corrections of Military Records (ABCMR) if he desires to pursue addition of these conditions as unfitting and ratable by the DES.

**Hip Pain**, **Sleeping Disorder, and Myasthenia with Interference of Vision**. These conditions were not addressed by the NARSUM, MEB or PEB; therefore, they are beyond the scope of the PDBR. The CI should be referred to the ABCMR if he desires to pursue addition of these conditions as unfitting and rated by the DES.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that for rating bilateral varicose veins any prerogatives outside the VASRD was exercised. The bilateral varicose vein rating should be separated into Left leg at 10% and Right leg at 10% with the bilateral factor (1.9%) added.

The Board opined that CI's LBP should be added as an unfitting condition (5292 Spine, limitation of motion, lumbar) and rated at 10% IAW §4.59 Painful motion, absent the Army pain rule. LS spine was clearly mentioned in the NARSUM (All Other Conditions; Lumbar thoracic degenerative joint disease), as part of the Disability Evaluation System (DES) package, despite not being listed as a separate diagnosis on the front of DA Form 3947, MEB Proceedings. The CI's profile was for LBP and varicose veins and listed restrictions that could not be attributed to varicose veins alone. The commander's memo specified LBP as restricting the CI's ability to complete common soldier tasks. There was abnormal imaging of the LS spine showing degenerative changes, and painful motion and painful radiculopathy was documented in the records. As there was no mechanical limitation of LS motion that could be construed as more than "slight", and pain such as local LS pain or mild radicular pain being considered in the overall back rating, the 10% level criteria of 5292 "slight" was more appropriate than the 20% "moderate" level, as pain in the legs was attributed to the varicose vein diagnoses.

The Board unanimously voted to rate each leg varicose veins, 7120 at 10% and to add Lumbar thoracic degenerative joint disease, as unfitting and rated using VASRD 5292 at 10%. All other potential diagnoses are beyond the scope of the Board and the CI should be referred to the ABCMR if he wishes to add them as new unfitting, ratable conditions.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of the CI’s prior medical separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Varicose Veins, Right Leg | 7120 | 10% |
| Varicose Veins, LEFT Leg | 7120 | 10% |
| Lumbar thoracic degenerative joint disease, painful motion | 5292 | 10% |
| Combined | 30% |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090128, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

