RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: army

CASE NUMBER: PD1001180 SEPARATION DATE: 20091102

BOARD DATE: 20120111

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (13F, Fire Support) medically separated for varicose veins of the left leg*.*  He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB). The varicose vein condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Five other conditions, identified in the rating comparison chart below, were listed on the DA Form 3947 as medically acceptable. The PEB found the left leg varicose veins unfitting, and assigned a rating of 20%. The CI accepted the PEB findings, and waived a formal hearing. He was thus separated with a 20% disability rating, IAW applicable Army and DoD regulations.

CI CONTENTION: The CI states, “The Veterans Administration through medical testing found a TBI that was received in line of duty. Line of duty TBI due to motor vehicle accident was not diagnosed during active duty. The VA tested and found it. Tinnitus was reported to medical staff at Ft Drum. However, no treatment was provided. Varicose veins only my left leg was considered in evaluation, my right leg is affected as well as evidenced by VA letter.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Army PEB – dated 20090819** | **VA (3 mo. After Separation) – All Effective 20091103** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Varicose Veins, Left Leg | 7120 | 20% | Varicose Veins, Left Lower Extremity  | 7120 | 10% | 20100222 |
| Varicose Veins of Right Leg – Not Rated by PEB | Varicose Veins, Right Lower Extremity | 7120 | 10% | 20100222 |
| No MEB/PEB Entry for Traumatic Brain Injury (TBI) | Traumatic Brain Injury (TBI) | 8045 | 10% | 20100204 |
| Syncope | Not Unfitting | Syncope – Service Connection Denied | NSC |  | 20100222 |
| Migraine Headaches | Not Unfitting | Headaches (claimed as migraine) | 8100 | 10% | 20100222 |
| Talus Spur/Right Ankle pain | Not Unfitting | Right Ankle Pain | 5010 | 0% | 20100220 |
| Gout  | Not Unfitting | Gout – Service Connection Denied | NSC |  | 20100220 |
| Tinnitus  | Not Unfitting | Tinnitus | 6260 | 10% | 20100220 |
| No MEB/PEB Entry for Shoulder Pain | Bilateral Shoulder Pain | 5010 | 10% | 20100222 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1  | 20100222 |
| **Combined: 20%** | **Combined: 50%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that Service ratings should have been conferred for other conditions, documented by the Department of Veterans’ Affairs (DVA). While the military Disability Evaluation System (DES) considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member’s career, and then only to the degree of severity present at the time of separation. The DVA, however; is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time.

Varicose Veins. In April 2007, the CI complained of pain and swelling in the left lower extremity (LLE). He was prescribed compression hose and was referred to vascular surgery. Duplex ultrasound on 10 October 2007 found no valvular incompetence at the left saphenofemoral junction. He continued to have pain and swelling of the LLE. A repeat duplex ultrasound in January 2008 revealed an incompetent saphenofemoral junction, with bilateral reflux (left greater than right). The CI underwent bilateral vein stripping on 23 January 2008. Despite the surgery, the CI continued to have pain in both legs with the left being worse than the right. At his June 2009 MEB exam, four and one-half months prior to separation, there were no signs of inflammation or redness. Calf measurements revealed mild swelling of the LLE. The left calf measured 44cm, and the right calf was 42cm. The CI’s chronic varicose vein condition had stabilized as far as pain level and swelling, but it was limiting his day-to-day activities. He was unable to perform in his Military Occupational Specialty (MOS), and being on his feet for long periods of time increased the symptoms. As noted above, the PEB found him unfit due to the LLE varicose veins. He was separated on 2 November 2009. At his February 2010 Compensation and Pension (C&P) exam, three and one-half months after separation, the CI complained of intermittent swelling of both legs, involving his calves and ankles. He also had pain in both lower legs that improved with walking. Prolonged standing or sitting would cause increased symptoms. He was not using any support hose. Examination revealed varicose veins of both legs. His diagnosis was bilateral varicose veins, left worse than right.

The Board carefully examined all evidentiary information available. The PEB rated the left leg at 20%, for persistent edema and pain. The VA rated each leg at 10%, for a combined varicose vein rating of 20%. From the treatment record, it was clear that the CI had bilateral venous disease, left leg worse than right leg. After due deliberation and consideration of all the evidence, and mindful of the Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.3 (reasonable doubt), the Board determined that the appropriate rating for the varicose vein condition was 20%. It is appropriately coded 7120, and IAW VASRD §4.104, meets criteria for the 20% rating.

Other PEB Conditions. Syncope, migraines, ankle pain, gout and tinnitus were all adjudicated by the PEB as “not unfitting.” None of these conditions were profiled, or implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for any of the stated conditions.

Other Contended Conditions. The CI asserts that a compensable rating should be considered for traumatic brain injury (TBI). This condition was reviewed by the action officer and considered by the Board. There was no diagnosis of TBI prior to separation. Careful review of the treatment record reveals insufficient evidence for concluding that this condition interfered with duty performance to a degree that could be argued as unfitting. The Board unanimously agrees that this condition was not unfitting at separation and therefore not subject to Service disability rating.

Remaining Conditions. Several other conditions were also noted in the DES file. None of these conditions were profiled, or implicated in the commander’s statement. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these other conditions significantly interfered with satisfactory performance of required military duties. It was determined that none could be argued as unfitting and subject to separation rating. Additionally, certain other conditions were mentioned in the VA rating decision proximal to separation, but not noted in the DES file. The Board does not have the authority to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the unfitting varicose vein condition and IAW VASRD §4.104, the Board unanimously recommends no change in the PEB adjudication. In the matter of the syncope, migraine headaches, right ankle pain, gout, tinnitus, TBI, or any other conditions eligible for consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Varicose Veins of Lower Extremities | 7120 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100916, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

