

Course 2 Anti-Doping Arbitration

Part III

Recent cases related to the doping controversy

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I. Situation under the 2015 Code

Interpretation under the 2015 Code

- I. Distinction between violation involving *Non-Specified* and *Specified Substance*
 - a. Violation involving *Non-Specified Substance*
 - i. 4 years : In principal (*Intentional*)
 - ii. 2 years : If the athlete can establish the violation was not intentional
 - b. Violation involving *Specified Substance*
 - i. 2 years : In principal (*Not intentional*)
 - ii. 4 years : If the ADO can establish the violation was intentional

Interpretation under the 2015 Code

II. Must Athlete prove the source of substance?

1. Interpretation which says how the substance entered his or her body is mandate

a. List of Jurisprudence

- SR/0000120248, *UK Anti-Doping Limited vs. Paul Songhurst*
- SR/0000120259, *UK Anti-Doping Limited vs. Lewis Graham*
- SDRCC DT 15-0225, *Canadian Center for Ethics in Sport and Judo Canada vs. Youssef Youssef*
- SDRCC DT 16-0242, *Canadian Center for Ethics in Sport and Canadian Weightlifting Federation Hal Terophile Canadienne vs. Taylor Findlay*
- FINA Doping Panel 05/15, *The Federation Internationale de Natation vs. Mauricio Fioi Vilalnova*
- AAA #01-16-000-7103, *United State Anti-Doping Agency vs. Ana Milena Fagua Raquira*
- CAS 2016/A/4377 *WADA vs. IFW and Yenny Fernanda Alvarez Caicedo*

Interpretation under the 2015 Code

II. Must Athlete prove the source of substance?

2. Interpretation which says how the substance entered his or her body is **not** mandate

a. List of Jurisprudence

- SR/0000120256, *UK Anti-Doping Limited vs. Andrew Hastings*
- SR/NADP/409/2015, *UK Anti-Doping Limited vs. Adam Buttifant*
- SDRCC 16-0246, *Canadian Center for Ethics in Sport vs. Tristan Grosman*
- AAA #01-16-005-1873, *USADA vs. Tony Blazejack*
- CAS 2016/A/4534, *Mauricio Fiol Villanueva vs. Fédération Internationale de Natation*
- CAS 2016/A/4676, *Arijan Ademi vs. UEFA*

CASE: JSAA-DP-2016-001

- ❑ Case Number: JSAA-DP-2016-001
- ❑ Decision Date: 18 August 2017
- ❑ Type of Dispute: Doping
- ❑ Anti-Doping Regulation: Japan Anti-Doping Code (**JADC**)
- ❑ First Instance: Japan Anti-Doping Disciplinary Panel (**JADDP**)
- ❑ Appealed Body: Japan Sports Arbitration Agency (**JSAA**)
- ❑ Claimant: X (Cyclist)
- ❑ Respondent: Japan Anti-Doping Agency (**JADA**)
- ❑ Language of the Decision: Japanese

CASE: JSAA-DP-2016-001



CASE: JSAA-DP-2016-001

J
A
D
D
P



can **not** establish
not *intentional*



Period of Ineligibility

Four Years

J
S
A
A

contamination



can establish
not *intentional*



Contaminated
Product

No significant
Fault and Negligence



Period of Ineligibility

Four months

II. Situation under 2021 Code

Interpretation under the 2021 WADC

I. Must Athlete prove the source of substance?

1. 2021 Code Article 10.2.3

The term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

2. **Comment to Article 10.2.1.1:**

While it is **theoretically possible** for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one’s system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.

CASE: CAS 2020/A/7579 & CAS 2020/A/7580

- ❑ Case Number: CAS 2020/A/7579 & CAS 2020/A/7580
- ❑ Decision Date: 16 September 2021
- ❑ Type of Dispute: Doping
- ❑ Anti-Doping Regulation: Swimming Australia Limited Anti-Doping Policy
- ❑ Previous Instance: Swimming Australia / Oceania CAS
- ❑ Appealed Body: Court of Arbitration for Sport (**CAS**)
- ❑ Claimant: Sport Integrity Australia (SIA) & WADA
- ❑ Respondent: X (Swimmer) & Swimming Australia
- ❑ Language of the Decision: English

CAS 2020/A/7579 & CAS 2020/A/7580

I. Fact of the Cases

1. On 26 June 2019, the Athlete underwent out-of-competition testing at the Tobruk Pool in Cairns, Australia, during the Australian Swimming Team camp (para 7).
2. Di-hydroxy LGD-4033, a metabolite of ligandrol, was detected from her urine sample. Ligandrol is a non-specified substance (2019 Prohibited List S1.2, substances always prohibited) (para 8,9)。
3. On 12 July 2019, ASADA notified a positive test for ligandrol. On the same day, the Swimming Australia (SA) notified the Athlete of a mandatory provisional suspension (paras. 9, 10 and s11)
4. On 19 December 2019, the AD Panel of SA found an ADRV and notified the Athlete of her 4-year ineligibility as from 12 July 2019.(para. 14)

CAS 2020/A/7579 & CAS 2020/A/7580

I. Fact of the Cases

5. On 2 January 2020, the Athlete filed with the CAS Oceania Division, requesting the annulment of the decision (para. 15).
6. The Athlete failed to establish the source of the prohibited substance in her submission. (paras. 16-17)
7. The Panel finds that the Athlete has established that the ADRV was unintentional. The CAS-OD panel imposed a two-year ineligibility from the date of the provisional suspension. (paras. 21-32)
8. WADA appealed on 7 December 2020. SIA also appealed on the same day. (paras. 33-34)

CAS 2020/A/7579 & CAS 2020/A/7580

II. Submission by parties

【WADA & SIA】

1. A failure to prove the source constitutes obstacle to success. An erosion of this would “*open the floodgates*” to overly liberal dispensation of reductions. (para. 60.b).
2. The Athlete’s protestations of innocence, her previous clean records, and character evidence are little or no weight (para. 60.f).

【Athlete】

1. Although evidence of the exact source of the ADRV would be helpful to the Athlete’s case, its lack is not fatal. (para. 65.i)
2. A combination of factors: her diligence and character evidence / the absence of a suspect improvement in her performance / the accepted possibility that contamination occurred and so on (para. 65. o)

CAS 2020/A/7579 & CAS 2020/A/7580

III. Conclusion & Reasoning of the Panel

【Conclusion】

The majority of the Panel found that the Athlete established that she did not intentionally ingest the prohibited substance. As a result, the request by SIA & WADA was dismissed.

【Reasoning】

1. **Character references** are not to be dismissed. They must be taken with a grain of salt, and evaluated contextually with discernment. (para. 174)
2. **Quantities** of Ligandrol is insufficient to boost strength, speed, or recovery. (para. 155)
3. Contamination from Gym or Pool is **not impossible** given the apparent communicability of Ligandrol. (paras. 160-161)
4. She underwent anti-doping **education** (para. 165)

The hypothesis of her innocence seems on balance more likely than that she either intended to take the substance or was recklessly oblivious to the risk. (para. 180.)

III. Summary

Summary

- I. The 2021 Code accepts the possibility to achieve a reduction of the period of eligibility without establishing the source of the Prohibited Substance.
- II. Evaluation of CAS 2020/A/7579 & CAS 2020/A/7580

- Factors Considered

(objective)

Quantity
Performance
enhance

Possibility of
Source

Education

(subjective)

Character

- My opinion to the case: The hurdle is too low.
- Background: Non-flexible structure of sanctions (4 or 2 years) under the Code.

Thank you!!

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