

JUDICIAL AWARD BY THE FISA DOPING HEARING PANEL

sitting in the following composition

Members: **John Boulton**
 Jo Hannafin
 Algirdas Raslanas

In the case of Serhii Budko

The Facts

On behalf of FISA, the testing agency PWC conducted out of competition anti-doping testing on 12 March 2016. A urine sample was collected from Serhii Budko ("the Athlete").

The urine Sample collected from the Athlete was numbered 3799762 and recorded on the Doping Control Form. The Athlete signed this form and received a copy. Serhii Budko declared on the doping control form that he had not taken any medications or supplements during the seven days before the test. He made no comments on the doping control procedure. The WADA accredited laboratory in Kreischa received the "A and B" urine samples on 17 March 2016.

The results from the Kreischa Laboratory dated 13 April 2016 indicate that Sample 3799762 showed the presence of meldonium at a concentration level of 35 µg/mL. Meldonium is included in the 2016 Prohibited Substances/Methods List of the World Anti-Doping Code and is classified in class S4 Hormone and Metabolic Modulators.

According to the WADA Notice on Meldonium dated 30 June 2016, following a sample collection date between 1 March 2016 and 30 September 2016, a concentration level of above 5 µg/mL must lead to the normal results management procedures.

No departures from the International Standard for Testing (ISL) have been established as having occurred during the testing or analysis procedure. The Athlete does not have a valid TUE.

The Athlete was notified of the positive test result by the Executive Director of FISA in a letter dated 23 April 2016 and a provisional suspension from competition under Article 7.9.1 of the FISA Anti-Doping Bye-Laws was applied from that date. The National Federation did not request the B sample to be analysed and this was confirmed in the Questionnaire completed by the Athlete.

The hearing took place on 11 August in Rio de Janeiro. The Athlete did not attend the hearing, and confirmed in the Athlete Questionnaire that he did not wish for a representative to attend the hearing.

Evidence Provided for the Hearing

The material provided to the Panel was as follows:

1. Doping control form completed by the Athlete of 12 March 2016
2. Doping control form entered into ADAMS
3. Laboratory report from ADAMS dated 13 April 2016
4. Letter from the FISA Executive Director to the Ukraine federation dated 25 April 2016.
5. Completed Athlete Questionnaire
6. Translation of instructions for Mildronate
7. WADA Notice on Meldonium

Applicable law

The applicable rules

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (12 March 2016). These rules are consistent with the World Anti-Doping Code.

The relevant rules

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1.1 which states it is each Rower's personal duty to ensure no Prohibited Substance enters his body;
- Article 10.2 which sets a period of four years' ineligibility for a first violation for a prohibited substance, unless the anti-doping rule violation involves a specified substance and it can be established that the anti-doping rule violation was not intentional. The athlete shall have the opportunity to establish the basis for eliminating or reducing this sanction as provided in Articles 10.4, 10.5 and 10.6.

Articles 10.4 and 10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances
- Article 10.4 No Fault or Negligence

If a Rower establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated.
- Article 10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence.

Article 10.6 Reduction of the Period of Ineligibility for Reasons other than Fault

Merits

The Panel is satisfied that an anti-doping rule violation was established by the evidence of the laboratory analysis. There was the presence of meldonium in the Athlete's urine. The Rower does not contest the fact that he has committed an anti-doping rule violation.

The Athlete confirmed in the Athlete questionnaire that he had decided not to have the B sample analysed.

The concentration level of meldonium in the sample would indicate that the substance was taken by the Athlete in 2016, after the substance became prohibited on 1 January 2016. This was confirmed by the response of the Athlete in the Questionnaire in which he has stated that he took Mildronate containing meldonium in the period from 1 till 8 March 2016.

The Athlete stated in the Questionnaire that he had had the Mildronate in his possession since 2015. The medication had not been prescribed or given to him on this occasion. After feeling fatigue during training, he took a dose of 0.5 grams twice a day from March 1st to March 8th. This was the dose recommended in the instructions for the medical use of mildronate. He was tested soon after this – on 12th March, and did not indicate at that time on the Doping Control Form where asked to "List any Medications or Supplements taken over the past 7 days" that he had taken Mildronate a few days earlier.

The Athlete states in the Questionnaire that he was not suffering from any other health condition at the time of the test. He confirms that he was educated and informed by his national rowing federation or national anti-doping organisation of the dangers associated with taking a medication without first consulting a doctor. The information was communicated by "*print media*", and "*official information on web resources*". He did not sign the rower's commitment form required by FISA for all international rowers.

According to the Questionnaire responses, the Athlete does not wish to present his case to the FISA hearing panel, nor does he wish for a representative to be present. He feels that his right to be heard has been respected and that the hearing panel can reach their decision.

The evidence seen by the Panel establishes to the satisfaction of the tribunal that the adverse analytical finding for the presence of meldonium in the sample was due to the Athlete taking the medication, Mildronate.

The Athlete stated that had obtained the Mildronate in 2015 when it was still a permitted substance. He took the substance in 2016 because he was feeling fatigue during training.

The Panel considered whether the provisions of Articles 10.4 and 10.5 could apply and whether there was significant fault or negligence on the part of the athlete, or whether the 4 year period of ineligibility should be reduced.

The Panel concluded that there was a significant element of fault and negligence on the part of the athlete. He confirmed that his national federation or national anti-doping organisation had ensured that athletes had access to information through the print media and websites about the consequences associated with doping and other risks such as taking a medication without consulting a doctor and the dangers of contaminated nutritional supplements. The fault was that the Athlete did not apparently take any steps to check if the substance was permitted at the time of ingestion which would normally be expected of an experienced and apparently educated athlete. Moreover the Panel noted that he chose not to declare his use of Meldonium on the Doping Control Form.

In these circumstances the Athlete is not entitled to rely on Articles 10.4 or 10.5.

The only part of Article 10.6 which could apply to this case is Article 10.6.3 which provides that an Athlete may receive a reduction of the sanction where he promptly admits the Anti-Doping Violation after being confronted by FISA. The Athlete did not admit the use of Mildronate when he was tested on 12 March, nor did he admit the Violation when FISA advised his federation of the positive test on 23 April. It was only in the questionnaire he returned to FISA on 9 July that he admitted it. The Panel did not find this was a prompt admission warranting a reduction in the sanction.

FOR THESE REASONS

The FISA Doping Hearing Panel finds:

1. The Panel is satisfied that the requirements of Article 10.2 have been met and the Athlete has committed an Anti-Doping Rule Violation.
2. The period of ineligibility should be for four years. Normally it would commence from the date of the hearing but the Panel notes that the Athlete was provisionally suspended from 23 April, and under Article 10.11.3.1, the period of ineligibility should commence from that date, 23 April 2016.
3. This award is rendered without costs.

Rio de Janeiro, 12 August 2016

For the FISA Doping Hearing Panel:



John Boultonbee



Jo Hannafin



Algirdas Raslanas