

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY

Claimant

and

BENJAMIN BARNES,

Respondent

Re: AAA Case No. 01-17-0001-6275

AWARD OF ARBITRATOR

Pursuant to the American Arbitration Association's (AAA) Commercial Arbitration Rules as modified by the AAA Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (the **Supplementary Procedures**) as set forth in the USADA Protocol for Olympic and Paralympic Movement Testing as revised January 1, 2015 (the **USADA Protocol**), pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC §220501, *et seq.* (the **Act**), a hearing was held in Colorado Springs on June 7, 2017, before arbitrator Paul E. George (the **Arbitrator**), to consider and make findings with respect to the claim of an anti-doping rule violation against Respondent. Claimant's legal counsel was in attendance. The Respondent was invited to appear in person or by telephone but did not do so. Moreover, the Respondent did not have legal counsel. The Arbitrator does hereby Award as follows:

I. THE PARTIES

1. Claimant, United States Anti-Doping Agency (**USADA**), as the independent anti-doping agency for Olympic sports in the United States, is responsible for conducting drug testing and for adjudicating any positive test results and other anti-doping violations pursuant to the USADA Protocol. Jeffrey T. Cook, Esquire, Director of Legal Affairs of USADA, attended the hearing in person.
2. Respondent, Benjamin Barnes (**Barnes**), is a 27-year-old weightlifter, who resides in Long Beach, NY. He competed at the 2016 American Open held in Orlando, FL on December 8-11, 2016. According to records maintained by USA Weightlifting, the national governing body for the sport, Barnes has served as a coach in the sport and, in

addition to participation in the American Open, has competed recently in Team WNY October Open (October 2016), NY State Olympic Weightlifting Championships (September 2016), and 2016 National Championships & Olympic Trials (May 2016). Barnes did not respond to communications from the AAA with respect to this matter, and he was not represented by legal counsel at any time. (Claimant and Respondent shall be referred to collectively as “the parties” and individually as a “party”).

II. JURISDICTION AND APPLICABLE LAW

A. Jurisdiction

3. The Arbitrator has jurisdiction over this doping dispute pursuant to the Act §220522 because this is a controversy involving Respondent’s opportunity to participate in national and international competition. The Act states, in relevant part, that:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, [upon demand of the corporation or any aggrieved amateur athlete, coach, trainer, manager, administrator or official,] conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation’s constitution and bylaws. . . . Id. at §220522(a)(4)(B)

4. Under its authority to recognize a sport national governing body (NGB), the United States Olympic Committee (“USOC”) established the USOC National Anti-Doping Policy, the current version of which is effective as of January 1, 2015 (the **USOC Policy**), which, in relevant part, provides:

NGBs . . . shall comply with this Policy and shall adhere, in all respects, to the applicable provisions of the Code, the International Standards adopted by [the World Anti-Doping Agency (WADA)] and the . . . USADA Protocol. NGBs . . . shall not have any anti-doping rule which is inconsistent with this Policy, the Code, the International Standards adopted by WADA or the USADA Protocol. (Section 4.1.)

5. Regarding Respondent, the USOC Policy provides:

. . . each NGB . . . shall be responsible for informing Athletes, Athlete Support Personnel and other Persons in its sport of this USOC National Anti-Doping Policy and of the USADA Protocol. Id. at Section 14.1.

All Athletes, Athlete Support Personnel and other Persons, by virtue of their membership in an NGB, . . . , participation in the Olympic, . . . Pan American Games . . . , participation in an Event or Competition organized or sanctioned by an NGB, . . . participation on a national team, utilization of a USOC Training Center, receipt of benefits from the USOC, an NGB, . . . inclusion in the RTP, or otherwise subject to the Code agree to be bound by this Policy and by the USADA Protocol. [Section 14.2]

6. In compliance with the Act, Article 17(a) of the USADA Protocol, provides that hearings regarding doping disputes “[w]ithout exception, absent the express consent of the parties,

all hearings will take place in the United States before the AAA using the Supplementary Procedures.”

7. Neither party disputed the Arbitrator’s jurisdiction. USADA consented to it and participated in these proceedings without objection, and while Barnes did not participate, he registered no objection to these proceedings.

B. Applicable Law

8. The rules related to the outstanding issues in this case are the International Weightlifting Federation (**IWF**) Anti-Doping Rules, which implement the World Anti-Doping Agency Code (the **Code**). As the IWF rules relating to doping are virtually identical to the 2015 Code, the applicable Code provisions will be referenced throughout this Award and all references to “Articles” are to provisions of the 2015 Code unless otherwise noted.
9. The relevant Code provisions are as follows:

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

* * *

3.1 Burdens and Standards of Proof

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the arbitrator, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability, but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2. Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions...

* * *

8.3. Waiver of Hearing [There is no comparable Article 8.3 in the IWF Rules]

The right to a hearing may be waived either expressly or by the Athlete’s or other Person’s failure to challenge an Anti-Doping Organization’s assertion that an anti-doping rule violation has occurred within the specific

time period provided in the Anti-Doping Organization's rules.

** * **

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Methods

The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6.

10.2.1 The period of Ineligibility shall be four years where: . . .

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

** * **

10.11 Commencement of Ineligibility Period [Article 10.10 in the IWF Rules]

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.11.1 Delays Not attributable to the Athlete or other Person [Article 10.10.1 in the IWF Rules]

Where there have been substantial delays in the hearing process or other aspects of Doping control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period

of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

10.11.2 Timely Admission [Article 10.10.2 in the IWF Rules]

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Anti-Doping Organization, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.

* * *

APPENDIX ONE: DEFINITIONS

Fault: *Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete['s] . . . degree of Fault include, for example, the Athlete's ... experience, whether the Athlete ... is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's . . . degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's ... departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.*

No Fault or Negligence: *The Athlete['s] . . . establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. . .*

No Significant Fault or Negligence: *The Athlete['s] . . . establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. . .*

Specified Substance: *See Article 4.2.2, which states in relevant part as follows: "For purposes of the application of Article 10, all Prohibited Substances shall be Specified Substances except substances in the classes of*

anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. . .”

10. The Prohibited Substances at issue in this matter -- GW1516 sulfoxide and GW1516 sulfone which are metabolites of Peroxisome Proliferator Activated Receptor δ (“PPAR δ ”) agonists -- are included in Class S4 of the 2016 WADA Prohibited List and are not Specified Substances. The 2016 Prohibited List was in effect at the time that Barnes’s sample was collected on December 10, 2016.

III. PROCEDURAL HISTORY

11. Barnes competed at the American Open held in Orlando, FL on December 10, 2016, in the 85 kg weight class. Following his competition, Barnes was selected for drug testing, and was notified at 3:56 p.m. His urine sample #1589061(**Sample**) was processed at 4:39 p.m., as reflected in the Doping Control Official Record (**Doping Control Record**).
12. On January 5, 2017, Barnes was notified that his sample tested positive for metabolites of PPAR δ agonists. He was also notified that if he did not accept the A Sample laboratory results, his B Sample would be opened and analysed at the WADA approved laboratory in Salt Lake City, Utah on January 18, 2017 at 9 a.m. MST. Barnes requested, by email on January 11, 2017, that his B Sample be analysed. He was offered an opportunity to be present to observe the B Sample opening and analysis. He neither accepted the A Sample Laboratory results, nor attended the opening and analysis of the B Sample on January 18, 2017.
13. Barnes was notified on January 30, 2017 that his case was being forwarded to a panel of the Anti-Doping Review Board (**Review Board**). Barnes provided no explanation to the Review Board, and following deliberation the Review Board determined that there was sufficient evidence of an anti-doping rule violation and recommended that the adjudication process proceed.
14. In a letter dated February 27, 2017, USADA formally charged Barnes with an Anti-Doping rule violation. Barnes then requested a hearing by email dated March 15, 2017.
15. USADA initiated this AAA arbitration on March 31, 2017. On May 2, 2017, after holding a preliminary hearing via telephone conference call in which the Claimant provided availability dates, and the Respondent was absent after notice had been given, the Arbitrator scheduled a telephonic evidentiary hearing for Tuesday June 6, 2017.
16. At the request of the Arbitrator, the telephonic evidentiary hearing was subsequently moved from June 6, 2017, to Wednesday, June 7, 2017. Since the Arbitrator was in Colorado Springs on that date, he invited the parties to attend in person if they wished. Jeffrey T. Cook did attend on behalf of the Claimant. Mr. Barnes neither appeared in person, nor by telephone. There were no prehearing briefs.

IV. RESPONDENT’S ARGUMENTS AND SUBMISSIONS

A. Factual Matters

17. While the Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in this Award only to the submissions and evidence considered necessary to explain the Arbitrator’s reasoning.

18. The Respondent provided no evidence whatsoever. The Arbitrator inquired of the AAA about the transmittal of correspondence to the Respondent. The AAA stated that all documents were sent by certified mail, by regular US Mail, and by email. A letter from the AAA, dated May 3, 2017, sent by certified mail, was returned as "Refused". This letter contained the Arbitrator's Report of Preliminary Hearing & Scheduling Order setting the initial date and time for an evidentiary hearing. In an effort to contact Respondent, Mr. Cook testified that he had spoken with the Respondent's coach, Steve Titus, on May 16, 2017, who reported that he had not heard from Mr. Barnes in four to five weeks. Mr. Cook also said that he had confirmed Respondent's address with USA Weightlifting, and that upon making a telephone call to Respondent the answering message indicated that it was Barnes's telephone. Mr. Cook reported that he had also left a voicemail for the Respondent on June 6, 2017.
19. Barnes, by his failure to participate in this adjudication process in any way, has not denied responsibility for his positive Sample.

V. CLAIMANT'S ARGUMENTS AND SUBMISSIONS

A. Factual Matters

20. Jeffrey Cook stated that the sample taken on December 10, 2016, at the American Open was reported to be positive on January 5, 2017, following which Barnes was given a Provisional Suspension. Mr. Cook argued that any penalty should begin on the date of the Arbitrator's decision because the Respondent waived the availability of any exceptions that would permit an earlier start date. Barnes did not abide by the Provisional Suspension; instead, he competed at the Lehigh Valley Open on March 18 and 19, 2017. Mr. Cook stated that USADA is requesting a four year suspension.
21. Matthew Fedoruk, Senior Managing Director of Science and Research for USADA, testified that he was an expert with respect to the drug testing process and that he would testify specifically in connection with the Respondent's Sample. By way of qualification, he said that he has a Ph.D in pathology and laboratory medicine, that he served as a member of the Organizing Committee for the 2010 Olympic Winter Games in Vancouver where he managed anti-doping testing, education and laboratory analysis challenges, that he joined USADA approximately five years ago, and that he routinely reviews findings from WADA approved laboratories.
22. The Arbitrator accepted Dr. Fedoruk's qualifications, following which Dr. Fedoruk described in detail the sample collection process and, in particular, the Laboratory Document Package for Respondent's A Sample. He also reported on the analysis of the B Sample, the testing of which the Respondent requested by an email dated January 11, 2017. Since the Respondent did not appear at the B Sample testing, a surrogate, Toni Kirkwood, was appointed to observe the Sample analysis. Both Samples were determined to be positive for metabolites of PPAR δ agonists.
23. This substance is often referred to more generally as GW1516, a compound that, according to Dr. Fedoruk, is taken to enhance endurance. Its effects include improved energy metabolism; that is, the ability to exercise longer. It is not a drug approved by the U.S. Food & Drug Administration. Dr. Fedoruk indicated that WADA, in fact, distributed a warning about GW1516 in 2013 because it is thought to have potentially serious side effects.
24. Dr. Fedoruk concluded his testimony by stating the following:

- Respondent's Sample was analysed at the WADA accredited facility in Salt Lake City, Utah.
- The International Standards for Testing were applied to Respondent's Sample.
- GW1516, and related compounds, are not Specified Substances because they're "more egregious" compounds. Put another way, they are hormone and metabolic modulators and are less likely to have been consumed by an athlete for a purpose other than enhancement of sport performance.
- There is no valid therapeutic use exemption (TUE) available for GW1516 because the drug is not FDA approved and no responsible physician would prescribe it.

B. Applicable Default Sanction.

25. Dr. Fedoruk, by his thorough explanation of Barnes's laboratory document package, has established that Barnes's sample was not a Specified Substance, and therefore the period of Ineligibility should be four years under article 10.2.1.1.
26. Respondent did not participate in any aspect of the adjudication process, did not provide any explanation or defense for his positive drug test, and offered no rebuttable presumption referred to in Article 10.2.3 of the Code with respect to intent.
27. Barnes is an experienced competitive weightlifter, and has served as a coach, according to USA Weightlifting records. USA Weightlifting has routinely provided anti-doping information to its participants (e.g., through its website). While the absence of the Respondent from the proceedings prevents any assessment of his awareness of USA Weightlifting's anti-doping education and initiatives, it is reasonable to believe that he was aware, by his experience in the sport, of the prohibition against doping.

C. Start Date of Sanction

28. USADA argues that, under the Code, the default start date for a sanction is the date of the final hearing decision. USADA argues that there is no rationale to deviate from this default standard.
29. Respondent did not make a timely admission of his anti-doping rule violation in order to obtain the benefit of Article 10.11.2 and thus have his sanction begin as early as December 10, 2016, the date of Sample collection. When he was notified of his positive Sample by letter from USADA dated January 5, 2017, he was also provided with a form entitled "Acceptance of Laboratory Findings, Waiver of Right to B Sample Analysis and Waiver of Right to Contest Laboratory Findings", but he did not sign and return it to USADA. Accordingly, USADA argues that Respondent's request to receive the benefits of Article 10.11.2, without taking the necessary steps to earn the benefits of that Code provision, should be denied.
30. USADA argues further, and provided evidence to support its position, that the default rule should apply, such that the start date of the sanction is the date of the decision by this Arbitrator, because Barnes violated the Provisional Suspension by competing at the Lehigh Valley Open in March 2017.

VI. MERITS

A. Jurisdiction

31. In determining that he had jurisdiction in the matter, the Arbitrator not only considered the provisions set forth in Section II. A. of this Award, but also carefully reviewed the notices given to Respondent by the AAA and USADA with respect to this adjudication process, and finds that Respondent was adequately notified throughout.

B. Applicable Default Sanction

32. By the testimony of Dr. Fedoruk, USADA has met its burden that the Respondent committed an anti-doping rule violation and that such violation involved a non-Specified Substance referred to in Class S4 of Section 5.1 of the 2016 WADA Prohibited List.
33. The Respondent, by his absence from these proceedings, failed to provide any evidence that such violation was unintentional.
34. Based on the foregoing, the Arbitrator finds to his comfortable satisfaction that the period of ineligibility shall be four (4) years as set forth in Article 10.2.1.1 of the Code.

C. Start Date of Sanction


35. The Arbitrator finds that under Article 10.11.2, Respondent did not admit his anti-doping rule violation, nor did he sign an Acceptance of Laboratory Findings form. Moreover, Respondent failed to adhere to the Provisional Suspension by competing at the Lehigh Valley Open in March, 2017.
36. As indicated above, there was no evidence of no fault or negligence on the part of the Respondent.
37. There was no evidence of substantial delays in the hearing process or in other aspects of Doping Control not attributable to the Respondent.
38. The Arbitrator finds to his comfortable satisfaction that, under Article 10.11, the period of Ineligibility shall start as of the date of this Award.

VII. Findings and Decision

The Arbitrator therefore rules as follows:

- A. Respondent has committed an anti-doping rule violation under Article 2.2 of the Code for Use of a Prohibited Substance not involving a Specified Substance;
- B. The start date of Respondent's period of Ineligibility is the date of this Award, namely June 29, 2017, and the period of Ineligibility expires on June 29, 2021;
- C. Respondent's competitive results from the date of his positive test, December 10, 2016, and throughout the period of his Ineligibility, are to be disqualified, and any medals, points and prizes earned during that period shall be forfeited;

- D. The parties shall bear their own attorneys' fees and costs associated with this Arbitration;
- E. The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the Arbitrator, shall be borne by USADA and the United States Olympic Committee; and
- F. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.



Paul E. George
Arbitrator

Dated: June 29, 2017