

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION ARBITRATION
("AAA")
Commercial Arbitration Panel
AAA CASE NO. 01-16-0005-1367**

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| <p>UNITED STATES ANTI-DOPING AGENCY,</p> <p style="text-align:center">Claimant</p> <p>and</p> <p>GEA JOHNSON</p> <p style="text-align:center">Respondent.</p> | <p style="text-align:center">ARBITRATION AWARD</p> |
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**AWARD OF ARBITRATORS
As Modified June 30, 2017**

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs, arguments, and allegations of the parties, and after a hearing held on April 17, 2017 do hereby render the Panel's full award.

I. SUMMARY AND PROCEDURAL HISTORY

1. This case arises out of the collection by Claimant, United States Anti-Doping Agency ("USADA") of a urine sample from Respondent, Gea Johnson, at the USA Cycling Masters Track Championships on August 10, 2016. As described below, it is stipulated between the parties that Respondent's urine sample, urine specimen 1587611, tested positive for modafinil.
2. USADA sent respondent a charging letter on November 4, 2016 and after requesting a five day extension, Respondent requested a hearing on November 21, 2016.
3. USADA has alleged that Respondent violated Articles 2.1 and 2.2 of the UCI Anti-Doping Rules, Articles 2.1 and 2.2 of the Code. USADA asserts that the appropriate

sanction for this first anti-doping rule violation is a four year period of ineligibility. USADA agrees that Respondents prior doping violations are outside of the 10 year period and thus this matter is treated as a first doping violation under the applicable rules.

4. Respondent stipulated to facts sufficient to establish a violation of Article 2.1 of the UCI Anti-Doping Rules and the World Anti-Doping Agency Code, but alleges that she did not intentionally commit an anti-doping violation and should not be subject to a four-year sanction.
5. A telephonic procedural hearing was held on February 16, 2017 following which the Panel issued Procedural Order #1.
6. Pursuant to Procedural Order #1, Respondent submitted an opening brief and exhibits on March 20, 2017, Claimant submitted its opposition brief and exhibits on April 10, 2017, and Respondent submitted a reply brief with additional exhibits on April 14, 2017.
7. A full day hearing was held on April 17, 2017. Ms. Johnson and her mother, Sally Johnson appeared and gave testimony in person. Claimant's expert Dr. Daniel Eichner and Respondent's expert Dr. Martin Jiminez testified telephonically. Claimant's witness Dr. Matthew Fedoruk testified telephonically.
8. On April 18, 2017, the Panel reopened evidence to ask Respondent to produce photographs of the bottle of Nuvigil and its contents she testified about at the hearing, and invited both parties to make additional submissions on the quantitative value of the concentration of the prohibited substance in Respondent's August 10th urine sample and the qualifications on the concentration reflected in Exhibit 16. The Panel received the requested photographs from Respondent on April 25, 2017 and additional submissions and evidence from Additional submissions and evidence from Claimant on April 25, 2017 and from Respondent on May 2, 2017.
9. For the reasons described more fully below, the Panel has determined the required sanction is a period of ineligibility of 21 months beginning on August 10, 2016, with credit provided against the total period of ineligibility for the Provisional Suspension imposed September 30, 2016.

II. THE PARTIES

10. Claimant, USADA, is the independent anti-doping agency for Olympic Sports in the United States and is responsible for conducting drug testing and any adjudication of positive test results pursuant to the United States Anti-Doping Agency Protocol for the Olympic Movement Testing, effective as revised January 1, 2015. At the hearing, USADA was represented by William Bock, Esq. and Jeff Cook, Esq

11. Respondent, Ms. Gea Johnson, is a 49 year old American Masters Track Cycling athlete with four World Championship titles and the current world record holder in her age group in two separate track events, the 500M Time Trial and the Flying 200M. Respondent is included in the USADA RTP. At the hearing, she was represented by Howard Jacobs, Esq. and Lindsay Brandon, Esq. of the Law Offices of Howard L. Jacobs.

III. FACTUAL BACKGROUND

12. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced in these proceedings. Additional fact and allegations found in the Parties' written and oral submissions, pleadings, and evidence may be set out, where relevant, in connection with the legal analysis below. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Stipulated Factual Background

13. Prior to the April 17, 2017 hearing in this matter, USADA and Ms. Johnson stipulated for all purposes in this arbitration to the following:

1. USADA collected the urine sample designated as USADA urine specimen number 1587611 at the USA Cycling Masters Track National Championships on August 10, 2016;
2. USADA sent urine specimen number 1587611 to the World Anti-Doping Agency ("WADA") accredited laboratory in Salt Lake City, Utah (the "Laboratory") for analysis;
3. USADA's collection of the sample and the chain of custody for USADA urine specimen number 1587611 were conducted appropriately and without error;
4. The Laboratory's chain of custody for USADA urine specimen number 1587611 was conducted appropriately and without error;
5. The Laboratory, through accepted scientific procedures and without error determined that both the A and B Samples of USADA urine specimen number 158761 contained modafinil;
6. Modafinil is a Non-Specified Prohibited Substance in the class of Stimulants on the WADA Prohibited List, adopted by both the Protocol and the UCI Anti-Doping Rules; and

7. Ms. Johnson did not challenge the Provisional Suspension imposed on September 30, 2016 barring her from competing in any competitions under the jurisdiction of UCI, USA Cycling, and the USOC, or any clubs, member associations or affiliates of these entities, until her case is deemed not to be a doping offense or a hearing has been held and a decision reached in this matter.

B. Uncontested Factual Background

14. The following additional facts were uncontested by the parties:

1. Nuvigil is armodafinil, a form of modafinil.
2. Modafinil is a prescription drug only prohibited in-competition;
3. According to the scientific literature, the half-life of Nuvigil is approximately 12 to 15 hours and the peak plasma concentrations are 2-4 hours after ingestion.
4. Respondent did not have a prescription for Nuvigil;
5. USADA's website offers guidance and warnings with respect to medications used out-of-competition, including the following response in the Frequently Asked Questions Page:

“Predicting the time it takes for a medication to clear completely from your system is complicated, can vary greatly, and is unique between individuals and to each medication. For this reason, USADA cannot predict urine and/or blood clearance times for athletes. You will need to talk with your physician and/or pharmacist about the average time it takes the body to clear a particular medication, and whether there are any known factors that might affect how your body might process that medication. Once you have that information, you will need to decide for yourself whether the “clearance time” estimated by your physician or pharmacist is sufficient for you to compete. If you are not certain that the medication will have cleared by the time you compete, you are encouraged to apply for a TUE.”

6. Respondent did not have a TUE for modafinil or Nuvigil
7. Respondent is an experienced athlete who has received significant anti-doping education and training, including online training in 2015; and
8. Respondent did not include Nuvigil on her doping control form.

IV. JURISDICTION AND APPLICABLE LAW

15. Prior to the April 17, 2017 hearing in this matter, the parties also stipulated that the USADA Protocol for Olympic and Paralympic Movement Testing (“Protocol”) governs all proceedings involving USADA urine specimen number 1587611 and that the mandatory provisions of the World Anti-Doping Code (the “Code”) including, but not limited to, the definitions of doping, burdens of proof, Classes of Prohibited Substances and Prohibited Methods, sanctions, the Protocol, the international Cycling Union (“UCI”) Anti-Doping rules, and the United States Olympic Committee (“USOC”) National Anti-Doping Policies are applicable to this matter.
16. The Panel has jurisdiction pursuant to Article 17 of the Protocol. There was no challenge to arbitration jurisdiction in this proceeding.
17. The procedural rules applicable to this case are set forth in the AAA Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (“the AAA Rules”) as set forth in the USADA Protocol. Pursuant to The USADA Protocol and the cases arising thereunder as well as before the Court of Arbitration for Sport, shall apply in this proceeding.
18. In light of the Parties’ stipulations, the sole issue for determination by the panel is the appropriate sanction for Ms. Johnson’s doping violation. The appropriate sanction in this case is determined by reference to Article 10.2 of the Code, which in relevant part provides:

10.2 *Ineligibility for Presence, Use, or Attempted use, or Possession of a Prohibited Substance or a Prohibited Method*

The period of ineligibility for a violation of Articles 2.1, 2.1, or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 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 not be considered “intentional” if the substance is not a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition* in a context unrelated to sports performance.

19. Article 10.5 of the Code “allows for a reduced sanction if an athlete can prove she was not significantly at fault or negligent” so long as the athlete can establish how the Prohibited Substance entered his or her system. To be eligible for a reduction, the Athlete must also establish how the prohibited substance entered his or her system.
20. Pursuant to Article 10.11 of the Code, the period of ineligibility may start “as early as the date of the Sample collection” if there have been substantial delays in the hearing process not attributable to the Athlete and the athlete is entitled to credit for the period of provisional suspension against any period of ineligibility impose.
21. Burden and Standards of Proof. It is not contested that USADA bears the burden of establishing that an anti-doping rule violation has occurred and that Ms. Johnson bears the burden of proof of establishing that her conduct was not intentional within the meaning of Article 10.2, and if she succeeds at that to establish that her anti-doping rule violation was the result of no fault or no significant fault by her, if she seeks a further reduction of the sanction.
22. Pursuant to Article 3.1 of the Code, in order to carry her burden to prove that her anti-doping rule violation was not intentional, Ms. Johnson must satisfy the “balance of probability” standard (“Where these Anti-Doping Rules place 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.”)
23. Pursuant to Article 3.2 of the Code, facts relating to anti-doping rule violations may be established by “any reliable means, including admissions.” Relevant case law provides guidance on the type of evidence a respondent must provide to meet her burden of establishing by a balance of probability that her conduct was not intentional.

V. USADA’S CONTENTIONS

24. USADA contends that Respondent failed to meet her burden of proving that her use of modafinil was not intentional.
25. USADA asserts that analyzing the circumstances that led to the ingestion of a prohibited substance is “critical to determining whether an athlete has met his or her burden of non-intentional use.”

26. USADA points to, *inter alia*, the following factors to argue that Respondent has failed to meet her burden of proving her use of the non-specified substance modafinil was not related to sport performance: modafinil is a powerful stimulant “perfectly suited for sprinters and track cyclists because it shortens reaction times and alertness” which “lends itself to abuse in sports”; Respondent did not obtain a prescription from her physician, but instead claims she obtained it from her coach; Respondent’s doctor’s letter states she told Respondent Nuvigil “could help her manage her extreme work and training.”
27. USADA argues instead that the facts and circumstances of this case support a finding that Respondent’s motivation to use modafinil was tied to sport performance. USADA also argues that if Respondent “had simply inquired, researched or even read the materials USADA provided her with respect to clearance times, she would have known that she needed to apply for a Therapeutic Use Exemption.”
28. USADA further contends that Dr. Eichner’s expert report shows that the concentration of modafinil in Respondent’s urine samples is consistent with ingestion “2-48 hours before providing” her urine sample and the failure to disclose her use of Nuvigil appeared to be intentional.
29. USADA argues that taken together, Respondent’s use of modafinil close in time to the competition, her inability to establish the source or manner by which she obtained the prohibited substance; her failure to include the substance on her doping control form; and her sport-driven motivation for using the prohibited substance prevent Respondent from carrying her burden of proving that her use was not intentional and thus the default sanction is four years.
30. USADA submits that, even if the Panel believes Respondent has proved her use was not intentional, a two-year sanction should be imposed because Respondent failed to carry her burden of showing how the prohibited substance entered her system to be eligible for a reduction.
31. USADA further contends that because Respondent obtained and used prescription medication containing a prohibited substance through unlawful means, used the medication “close in time to a major competition” and failed to disclose the substance on her doping control form, Respondent cannot carry her burden of proving she was not significantly at fault or negligent.
32. If the Panel finds that Respondent has met her burden of proving she was not significantly at fault or negligent, USADA contends that applying *Cilic*, because modafinil is a “medicine designed for therapeutic use,” the Panel should hold Respondent to the highest standard of care, that Respondent did not meet that standard of care and the appropriate sanction would be 16-24 months.
33. Finally, USADA contends that the start date for sanctions should be September 30, 2016.

VI. RESPONDENT'S CONTENTIONS

34. Respondent testified that the long and irregular hours she worked and the heat in Arizona required her to train late at night, that she struggled with sleep issues and that she obtained Nuvigil from her coach and took it out of competition to help keep her alert for late night training sessions. Respondent provided evidence that a common clinical use of Nuvigil is for workers with differential shifts.
35. Respondent testified and presented evidence that she obtained Nuvigil 150mg tablets from her coach Ian Danney, and after the hearing submitted photographs of the bottle and tablet she ingested.
36. Respondent testified that before taking Nuvigil, she consulted a doctor who agreed that Nuvigil could help her. Respondent introduced into evidence a letter from Dr. Petterson, which stated that Dr. Petterson discussed Nuvigil with Respondent because of her "excessive workload of intense athletic training, work leading to fatigue and compounded by poor sleep quality" and that Nuvigil could "help her manage her extreme work and training."
37. Respondent further testified that prior to using Nuvigil, she researched the drug on the DRO website which confirmed that "Nuvigil" 150mg tablets were prohibited in-competition but not out-of-competition.
38. Respondent testified that she had been taking Nuvigil tablets once or twice a week from March of 2016 to July 2016 and testified and presented evidence that she had been tested out of competition during that time without incident. Respondent testified that she believes between July 5th and August 4th 2016 she took Nuvigil tablets on ten occasions.
39. Respondent's briefs had asserted she last took Nuvigil on August 4th, approximately 6 days before the event. At the hearing she testified that because she took it late at night when she trained, it may actually have been on August 5th, and thus only five days prior to the event. Respondent contends that because she last used Nuvigil approximately five or six days before the event her positive test for modafinil was caused by her out-of-competition use of Nuvigil. Respondent presented evidence that according to the scientific literature the elimination half-life of modafinil is 12-15 hours and it reaches a maximum plasma concentration two to four hours after ingestion.
40. Respondent testified that her use of Nuvigil was unrelated to any performance enhancement purpose.
41. Respondent contends that because of "substantial delays" in the hearing process not attributable to her (in particular the disqualification of Mr. Mishkin as an arbitrator and

the attendant delay from November to February to constitute a panel), the start date for any sanction should be the date her sample was collected – August 10, 2016.

VII. ANALYSIS

A. Default Sanction

42. Under Article 10.2 of the Code, the Panel must first analyze the applicable “default sanction” before considering any reduction of that sanction. Because modafinil is a non-specified substance prohibited only in-competition, Respondent is entitled to a rebuttable presumption that the adverse analytical finding at issue here is not “intentional” and the default sanction is thus two years if she proves by a balance of the probabilities that the prohibited substance was used out-of-competition in a context unrelated to sport performance.
43. Here the parties’ experts agree that the half-life of modafinil is 12-15 hours and that the peak plasma concentration is two to four hours after ingestion. After considering all of the submissions of the parties and evidence presented, the Panel concludes Ms. Johnson has established by a balance of probability that she took Nuvigil 150mg tablets obtained from her coach Ian Danney out-of-competition knowing that Nuvigil was only prohibited in-competition.
44. Although USADA raised questions in its brief about whether Respondent had in fact obtained Nuvigil from her coach Ian Danney, the Panel finds Respondent produced sufficient additional evidence in her reply brief, at the hearing and in her post-hearing submissions (including the testimony of her mother, text messages between Respondent and Mr. Danney and photographs of the bottle of Nuvigil and the Nuvigil tablets she testified she obtained from Mr. Danney) to prove to the Panel that she had indeed obtained Nuvigil 150mg tablets from Mr. Danney. While these facts raise questions about where Mr. Danney obtained a prescription medication in such quantities as to give it to her for training but those questions are inapposite to this case.
45. The Panel is not persuaded by either Dr. Eichner’s conclusion that “the only reasonably available conclusion is that modafinil was administered to Ms. Johnson within 2-48 hours prior to being tested” or his conclusion that “As the concentration found in the urine, 400ng/ml is well above the Limit of Detection, I would suggest it is not at the tail end of the detection and indicative with more recent use.”
46. In particular, the Panel notes that the scientific studies referred to by Dr. Eichner in his opinion and attached as Exhibit 85 do not appear to support his conclusions. Only two of the studies USADA has presented, and Dr. Eichner has relied on only two studies involving urine samples: 1) a study conducted by Tseng et al in 2005 which tracked modafinil in urine samples collected from three volunteers over a 120 hour period after a single ingestion of 100mg of modafinil and 2) a study conducted by Dubey et al in 2009 in which two healthy male volunteers under age 30 were given

one single dose of 100mg of modafinil, following which urine samples were collected for 72 hours. The Tseng study found that the times for unchanged modafinil to reach peak concentrations in urine varied, with times of 2 hours (peak of 6140 ng/ml), 4 hours (peak of 9930 ng/ml) and 8 hours (peak of 3580 ng/ml) for the three subjects. The Limit of Detection reported in the Tseng study was 1009 ng/ml and all three volunteer cleared the drug within 48-72 hours. The Dubey study only reported that the “parent drug could be traced till eighty hours post drug administration” whereas the peak concentration was eliminated within 6 h.”

47. USADA presented evidence that the concentration of modafinil detected in Ms. Johnson’s sample was only 400ng/ml. Even without making any adjustments for Ms. Johnson’s repeated ingestion of 150mg tablets of Nuvigil in the months leading up to the sample, the differences between rmodafinil (Nuvigil) and modafinil, Ms. Johnson’s age, or considering the conflicting arguments about the accuracy of the quantification of the concentration of modafinil detected in Ms. Johnson’s sample, and using the 400 ng/ml concentration submitted by USADA, the evidence suggests Ms. Johnson’s urine contained only 4% to 11% of the peak concentration levels of the volunteers in the Tseng study found between 2 and 8 hours after ingesting a single 100mg dose, and less than half of the Limit of Detection reported in Tseng’s study which found that the drug cleared within 48-72 hours of all three volunteers ingesting a single 100mg dose. Accordingly, the Panel finds the balance of the probability is that Ms. Johnson took Nuvigil more than 72 hours prior to the sample.
48. The Panel also finds that through her testimony and the evidence she submitted, Respondent by a balance of the probabilities that her use of Nuvigil was unrelated to sport performance.
49. Because the Panel finds Ms. Johnson’s use of modafinil was out-of-competition and unrelated to sport performance, she is entitled to a rebuttable presumption that it was not intentional within the definition of the Code.
50. The Panel finds that USADA has failed to carry its burden of proving that Ms. Johnson engaged in conduct which she knew constituted an anti-doping rule violation or that Ms. Johnson knew that there was a significant risk that her conduct might result in an anti-doping rule violation and manifestly disregarded that risk. Thus, the default sanction is two-years.

B. Reduction of Sanction

51. Because the Panel finds Ms. Johnson took the Nuvigil 150 mg tablets she obtained from Mr. Danney out-of-competition, the Panel is guided by the reasoning in *Cilic v. International Tennis Federation*, CAS2013/A/3327, cited by both USADA and Respondent, that this case involving a substance prohibited in-competition only must be distinguished from cases involving substances prohibited out-of-competition. As *Cilic* stated, the situation here is different because:

“the taking of the substance itself does not constitute doping or illicit behavior.

The violation (for which the athlete is at fault) is not the ingestion of the substance, but the participation in competition while the substance itself (or its metabolites) is still in the athlete's body. The illicit behavior, thus, lies in the fact that the athlete returned to competition too early, or at least earlier than when the substance he had taken out of competition had cleared his system for drug testing purposes in competition. In such cases, the level of fault is different from the outset. Requiring from an athlete in such cases not to ingest the substance at all would be to enlarge the list of substances prohibited at all times to include the substances contained in the in-competition list."

52. The Panel finds that the vast majority of the cases cited by USADA are inapposite, as almost all of them involve situations where the athlete claimed not to know how the prohibited substance entered his or her system and/or offered speculative testimony of the possible sources for the prohibited substance. See, e.g. Raquira, AAA Case 01-16-0000-7103 ("pure speculation about supplements), Chan, AAA Case 01-16-0000-8552) (contaminated meat) Yousseff, SDRCC (sabotaged supplement) Townsend, SR/NADP/481/2015 (sabotaged "spiked" drink); McKenzie, SR/0000120256 (used syringe); Williams, SR/0001120251 (unknown supplements from unknown person); Graham, SR/0000120259 (contaminated supplement); Keyter, CAS2006/A/1067 (spiked drink); Stanic, CAS 2006/A/1130 (laced cigarette); Koshov, FEI 10039004 (contaminated hookah).
53. Since Ms. Johnson is a very experienced athlete who has been well educated on anti-doping issues, and modafinil is a prescription "medicine designed for a therapeutic purpose", the rules still require Ms. Johnson to exercise a high standard of care before returning to competition after ingesting Nuvigil. *Cilic* suggests that to satisfy this standard of care, Ms. Johnson could be expected to take the following actions: read the label of the product used (or otherwise ascertaining the ingredients); cross-check all of the ingredients on the label with the list of prohibited substances; make an internet search of the product; ensure that the product is reliably sourced; and consult appropriate experts in these matters and instruct them diligently before consuming the product.
54. The Panel finds that Respondent clearly satisfied one of those elements – she conducted an Internet search on Global DRO to ascertain that Nuvigil was on the list of non-specified substances prohibited only out-of-competition. Ms. Johnson could have been expected to know that Nuvigil is a prescription medicine that she needed to obtain from her doctor rather than her coach and thus she falls short of the expected standard of care for reading the label and reliably sourcing Nuvigil. At the same time, it is not clear that obtaining a doctor's prescription and procuring the Nuvigil from a reliable pharmacy would have prevented the violation. Although Ms. Johnson is clearly responsible for returning to competition too soon after taking Nuvigil, the Panel is not persuaded that Ms. Johnson could have obtained more reliable information about the clearance time for modafinil by consulting appropriate experts. Instead, after reviewing the scientific evidence presented by USADA and considering the testimony of both Dr. Eichner and

Dr. Martin Jimenez, the Panel finds that the only available scientific literature showed clearance times of 48-72 hours and that as discussed above, the balance of probability is that Ms. Johnson took the Nuvigil she obtained from Mr. Danney more than 72 hours before the competition. The Panel further notes that given the lack of scientific evidence on clearance times for either modafinil or R-modafinil (Nuvigil), Ms. Johnson could not have reasonably consulted experts to provide advice on clearance times for modafinil. On balance, the Panel concludes that based on the objective fault factors the two-year default sanction period could be reduced to sixteen to 24 months.

55. Next, the Panel must consider the subjective element of fault. In the panel's assessment, the mitigating subjective factors which could reduce the ineligibility period include the facts that Ms. Johnson does not appear to have sought or gained a competitive advantage by taking Nuvigil, Ms. Johnson did a search to determine that she was allowed to use Nuvigil out-of-competition, and that after Ms. Johnson started using Nuvigil once or twice per week, she was tested out of competition without a positive result. At the same time, Ms. Johnson's age and experience and extensive anti-doping education could have more reasonably led her to get a doctor's prescription, seek a TUE, and/or disclose Nuvigil on her doping control form. With respect to USADA's TUE argument, the panel notes that evidence was presented that USADA has never granted a TUE for modafinil, so if she had requested a TUE, which she did not have to do for an out of competition permitted substance, she would have been denied. In addition, the fact that she failed to disclose taking modafinil days earlier out of competition on her doping control form is of no persuasive effect; she has no obligation to fill out that form at all, let alone to list medications taken out of competition days earlier, and while her disclosure on the form might have mitigated an anti-doping rule violation arising from levels that suggested in-competition use, her failure to disclose does not establish anything here. After weighing all of the evidence, the Panel concludes that Ms. Johnson's conduct falls in the higher level of fault category, and a sanction of 21 months is warranted.

Starting Date for Sanction

56. In recognition of the several month delay in constituting an arbitral panel in this case caused by the disqualification proceeding involving USADA's selection of Mr. Mishkin, who had an obvious conflict of which USADA's counsel was aware prior to selecting him, which delay is not attributable to Ms. Johnson, the Panel finds the appropriate start date applying Article 10.11 is August 10, 2017, the date of sample collection.

DECISION AND AWARD

57. On the basis of the foregoing facts and legal analysis, this Panel renders the following decision:
58. Respondent has committed an anti-doping rule violation under Article 2.1 of the Code and the UCI Rules.


DECISION AND AWARD

57. On the basis of the foregoing facts and legal analysis, this Panel renders the following decision:
58. Respondent has committed an anti-doping rule violation under Article 2.1 of the Code and the UCI Rules.
59. The following sanction shall be imposed on Respondent:
- a. A twenty one (21) month period of ineligibility commencing August 10, 2016, including her ineligibility from participating in and having access to the training facilities of the United States Olympic Committee Training Centers or other programs and activities of the USOC including, but not limited to, grants, awards or employment pursuant to the USOC Anti-Doping Policies only during the period of ineligibility.
 - b. Respondent's results from August 10, 2016 are disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes pursuant to Article 9 of the Code.
60. The parties shall bear their own attorneys' fees and costs associated with this arbitration.
61. The Administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the Arbitrators shall be borne entirely by USADA and the USOC.
62. This Award is in full settlement of all of the claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are denied.
63. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated (as modified): June 30, 2017



Laura C. Abrahamson, Chair



Jeffrey G. Benz



John Charles Thomas