

NATIONAL ANTI DOPING PANEL

Charles Flint QC

Carole Billington-Wood

Dr. Terry Crystal

UK ANTI-DOPING
and
CALLUM PRIESTLEY

Date of Decision: 16 July 2010

FINAL DECISION

1. The tribunal has been appointed to hear and determine a charge brought against Callum Priestley ("the athlete") of a doping offence contrary to Rule 32.2 (a) of the IAAF Anti-Doping Rules ("the Rules"), incorporated in UK Athletics Anti-Doping Rules ("UK ADR"), in that a Prohibited Substance (Clenbuterol) was found to be present in the urine sample taken from the athlete in an out of competition test conducted at Stellenbosch South Africa on 19 January 2010.
2. The Rules incorporate the Prohibited List which includes Clenbuterol as an anabolic agent listed in category 51.2 (Other Anabolic Agents) on WADA's 2010 List of Prohibited Substances.
3. The athlete is a competitive hurdler. He won a bronze medal at the IAAF under-23 European Championships in July 2009 and a gold medal at the AAA Senior Indoors competition in February 2010. Under rule 1.4 of the UK ADR he is subject to the Rules and is thus liable to out of competition testing.

4. The athlete is represented by Mike Morgan of Hammonds LLP. The athlete has waived his right to a hearing and requested that the panel deal with the case on the written submissions. We have received from the athlete a written response to the charge dated 29 June 2010, and a signed written statement. UK Anti-Doping has submitted a written submission in reply dated 9 July 2010.
5. The athlete admits the presence of Clenbuterol, a Prohibited Substance, in his sample and thus the commission of the doping offence. However he denies knowingly ingesting the substance and his case is that under IAAF Rule 40.5 (a) he bears “no fault or negligence” for the violation, so that the period of ineligibility which would otherwise be imposed may be reduced or eliminated. However the athlete accepts that on the evidence currently available he is unable to establish how Clenbuterol entered his system.

Procedural History

6. On 19 January 2010, the athlete underwent a doping control test in Stellenbosch, South Africa as commissioned by UK Anti-Doping (“UKAD”). On 18 February 2010 he received a charge letter from the UKAD stating that:
 - (a) his doping control sample had tested positive for the Prohibited Substance Clenbuterol;
 - (b) he was being charged with the commission of an anti-doping rule violation within the meaning of IAAF Rule 32.2 (a) (“*Presence of a Prohibited Substance or Metabolites or Markers in an Athlete’s Sample*”); and
 - (c) in accordance with IAAF Rule 38.2, he was provisionally suspended from competition with effect from 5pm on Friday 19 February 2010.

7. On the same day the athlete responded to UKAD stating that he had not knowingly ingested Clenbuterol, or any other Prohibited Substance, and that he did not know the source of the Clenbuterol found in his sample.

8. By letter dated 29 March 2010, UKAD referred the matter to the National Anti-Doping Panel and this tribunal was appointed. Directions for the determination of the case were made on 21 April 2010 and were later amended by agreement of the parties to allow further time for the athlete to obtain legal advice and file his response. The athlete's solicitors filed his Outline Response on 17 May 2010 and then requested a temporary stay of the proceedings to allow time for further investigations as to the source of the Prohibited Substance, including the carrying out of tests to ascertain whether certain supplements used by the athlete had been contaminated. UKAD agreed to the stay.

9. By email dated 18 June 2010, the athlete's solicitors informed UKAD and the NADP that investigations as to the source of the Prohibited Substance had been concluded, as a result of which he had decided to waive his right to a hearing. In line with the timetable agreed by the parties the athlete served a witness statement and final statement of response on 29 June and UKAD responded with its statement of case by 9 July.

The Doping Offence

10. The offence arises under Rule 32.2 (a) which provides that a doping offence shall be constituted by "the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample".

11. As recorded above there is no dispute that Clenbuterol is a Prohibited Substance and that it was found in the sample taken from the athlete on 19 January 2010. There is no suggestion that the athlete held a relevant therapeutic use exemption.

12. It follows that the doping violation under Rule 32.2 (a) is established. The issue which the tribunal has to determine concerns the sanction that should apply.

No Fault or Negligence

13. The athlete has explained in his statement and in his written submission the considerable efforts which have been made on his behalf to discover the source and means of ingestion through which Clenbuterol came to be found in his body. It was originally believed that the most likely source was contamination of supplements that he had been taking on the advice of a nutritionist, but scientific tests have failed to detect any trace in the those supplements. The suggestion made in his first submission that the source was a contaminated supplement has been withdrawn.

14. For the reasons which are set out in his witness statement the athlete now believes that the most likely source was meat from animals or poultry which had been treated with steroids, but again it has not proved possible to produce any scientific or other evidence to substantiate the theory that any meat which he ate in South Africa was so contaminated. Thus, as is accepted at paragraph 45 of his witness statement, he actually has no evidence to show how Clenbuterol came to be found in his body.

15. Rule 40.5(a) of the Rules provides as follows:

No Fault or Negligence:

If an athlete or other Person establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Rule 32.2(a) (Presence of a Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his system in order to have his period of Ineligibility eliminated.

16. It is under this rule that the athlete seeks to have any period of ineligibility eliminated. It is a pre-condition to the operation of the rule that the athlete must establish how the substance entered his system. It is clear that the burden of proof is on the athlete to bring himself within the provision, which is described in the 2009 WADA Code as being designed to deal with the “unique circumstance where the Athlete can establish that he or she had no Fault or Negligence, or No Significant Fault or Negligence”. Under Rule 33 the standard of proof required is the balance of probability.
17. In this case the athlete frankly accepts that there is no available evidence to substantiate the theory which is put forward. In reality the case is no more than an assertion that the prohibited substance was not deliberately ingested, so that it must follow that there is an innocent explanation for its presence in the athlete’s body. It is clear that no such argument could be accepted without violating the fundamental principles upon which the WADA code is based, for it would contradict the principle of strict liability for the finding of a prohibited substance in the body. This principle is reflected in Rule 32.2 which makes clear that athletes are responsible for any substance found in their body and that it is not necessary to prove intent or fault for a contravention to be established.
18. Accordingly the tribunal is required under the rules to determine that the athlete cannot invoke Rule 40.5 (a) or (b), because he cannot produce any evidence to show how the prohibited substance came to be found in his system. It is therefore not necessary to consider whether in any event the athlete could demonstrate no, or no significant, fault or negligence. Without knowing how the substance was actually ingested there is no basis for the tribunal to make any reliable judgement on the culpability of the athlete¹. It is not permissible to make a finding that the athlete bore no fault or negligence on the basis of speculation as to how the substance might have been ingested.

Ineligibility

¹ See *Karalantcheva v. ITF*, (CAS 2006IAJ032), award dated 3 July 2006, para 117. See also *WADA v. Sranic & Swiss Olympic Association*. CAS 2006/AJ1130, award dated 4 January 2007, para 39

19. Under Rule 40 the sanction for a first violation of Rule 32.2 (a) is a period of ineligibility from competition of 2 years. As the athlete has been subject to provisional suspension since 19 February 2010 the period of ineligibility should under Rule 40.10 run to midnight on 18 February 2012.

Decision

20. For the reasons given above, the tribunal makes the following decision:

- (1) A doping offence contrary to Rule 32.2(a) has been established;
- (2) Under Rule 40 the period of ineligibility to be imposed is 2 years from 19 February 2010 to 18 February 2012.

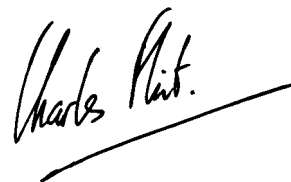
Right of Appeal

21. The athlete has a right of appeal against this decision, as a national level athlete, under IAAF Rule 42.6 to the NADP. Under Rule 10.2 of the UK ADR any appeal must be filed within 45 days of the receipt of this decision.

Charles Flint QC

Carole Billington - Wood

Terry Crystal

A handwritten signature in black ink that reads "Charles Flint." The signature is written in a cursive style and is underlined with a single horizontal stroke.

signed on behalf of the tribunal

16 July 2010