

ISSUED DECISION

In the Matter of:

UK ANTI-DOPING LIMITED

and

Anthony Carter

Relating to:

Disciplinary Proceedings under the Anti-Doping Programme of the Lawn Tennis Association

This is an Issued Decision as between UK Anti-Doping Limited (“UK Anti-Doping”) and Mr Anthony Carter (the “Player”) relating to an Anti-Doping Rule Violation arising from the Lawn Tennis Association (the “LTA”) Rules 2010, Appendix 4 – Tennis Anti-Doping Programme (the “Anti-Doping Rules”).

Background and Facts

1. UK Anti-Doping is the National Anti-Doping Organisation for the UK. It is responsible for managing the results of drug tests conducted under the Anti-Doping Rules of the LTA, the governing body for the sport of tennis in Great Britain.
2. The Anti-Doping Rules provide –
 - A.3 The Programme, which includes the schedules hereto, encompasses:*
 - A.3.3 Management of the results of such Testing, and of other evidence of possible Anti-Doping Rule Violations, by UK Anti-Doping (aka UKAD), the public agency that acts as National Anti-Doping Organisation for the United Kingdom.*
3. The Player (born 12 May 1988) is a wheelchair tennis player.
4. At all material times the Player was a participant in the sport of wheelchair tennis in the UK and subject to the Anti-Doping Rules.

5. On 27 May 2012, the Player competed in the National Wheelchair Tennis Championships. Following competition, the Player provided a urine sample for Doping Control purposes (the "Sample").
6. The Sample was submitted for analysis to the Drug Control Centre, Anti-Doping Science Centre, Harlow, a World Anti-Doping Agency ("WADA") accredited laboratory. The analysis revealed the presence of 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid (cannabis) (the "Prohibited Substance").
7. The Prohibited Substance is included in the WADA 2012 Prohibited List (the "Prohibited List") (Section S8).

The Charge

8. On 6 July 2012, the Player was issued with a Notice of Charge by UK Anti-Doping in respect of the commission of an Anti-Doping Rule Violation pursuant to Anti-Doping Rule C.1. Anti-Doping Rule C.1 provides that the presence of a prohibited substance or any of its Metabolites or Markers in an Athlete's sample constitutes an Anti-Doping Rule violation.
9. Prior to issuing the Notice of Charge, UK Anti-Doping satisfied itself that the Player did not possess, nor had he ever possessed, a therapeutic use exemption in respect of cannabis, and that there were no apparent departures from either the International Standard for Testing, or the International Standard for Laboratories, in respect of the collection and analysis of the Sample.
10. The Notice of Charge explained the facts relied on in support of the allegation that the Player had committed an Anti-Doping Rule Violation, the consequences of an admission or proof of Anti-Doping Rule Violations and the procedure for analysis of the B Sample.
11. The Notice of Charge did not impose a Provisional Suspension upon the Athlete.
12. On 13 July 2012, the Player admitted the Charge in writing. On 5 August, he waived his right to have the B Sample tested (also in writing).
13. The Player thereby admitted the commission of an Anti-Doping Rule Violation pursuant to Article C.1 of the Anti-Doping Rules.

Consequences

14. Article M.2 of the Anti-Doping Rules provides as follows:

M.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of Prohibited Substances and/or Prohibited Methods

The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article C.1 (presence of a Prohibited Substance or any of its Metabolites or Markers), Article C.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or Article C.6 (Possession of Prohibited Substances and/or a Prohibited Methods) that is the Participant's first offence shall be two years, unless the conditions for eliminating or reducing the period of Ineligibility (as specified in Articles M.4 and M.5) or the conditions for increasing the period of Ineligibility (as specified in Article M.6) are met.

15. Where a Player is found to have committed an Anti-Doping Violation under Article C.1 of the Anti-Doping Rules, and such offence is the Player's first Anti-Doping Violation, a period of Ineligibility of two (2) years must be imposed pursuant to Article M.2 ("the Standard Sanction").

16. This is the Player's first doping offence.
17. The Player did not seek to rely in mitigation on Article M.5.1 or M.5.2 of the Anti-Doping Rules. However, he has sought to mitigate the Standard Sanction by way of Article M.4.
18. Article M.4 of the Anti-Doping Rules states that:

M.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances

M.4.1 Where the Participant can establish how a Specified Substance entered his/her body or came into his/her Possession and that such Specified Substance was not intended to enhance the Player's sport performance or to mask the Use of a performance-enhancing substance, the period of Ineligibility established in Article M.2 shall be replaced (assuming it is the Participant's first offence) with, at a minimum, a reprimand and no period of Ineligibility, and at a maximum a period of Ineligibility of two (2) years.

M.4.2 To qualify for any elimination or reduction under this Article, the Participant must produce corroborating evidence in addition to his/her word that establishes, to the comfortable satisfaction of the tribunal, the absence of an intent to enhance sport performance or to mask the Use of a performance-enhancing substance. The Participant's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

19. Cannabis is a "Specified Substance" in the Prohibited List.

The Athlete's Explanation

20. The Player has provided written and oral evidence as to the ingestion of the cannabis. He explained that he suffered a serious accident in 2008, resulting in lower limb paralysis. After extended treatment, the Player began playing wheelchair tennis in 2009. He continued to suffer severe pain from his accident, despite the medication prescribed to him. He used cannabis to assist with the alleviation of pain.
21. UK Anti-Doping accepts the Player's explanation of how the Prohibited Substance entered his system. There is therefore no dispute as between UK Anti-Doping and the Athlete as to the means of entry of cannabis into the Athlete's system.

Intent to enhance performance

22. The Player asserts that he did not ingest cannabis with a view to enhancing his performance.
23. Article M.4.2 of the Anti-Doping Rules require that the Player "*must produce corroborating evidence in addition to his/her word that establishes, to the comfortable satisfaction of the hearing panel, the absence of an intent to enhance the Player's sport performance*".
24. The Commentary to Article 10.4 of the WADA Code states that there are "*objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent*", including the fact that "*the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Player*".
25. UK Anti-Doping does not believe that cannabis is a substance that is capable of enhancing sporting performance in the sport of wheelchair tennis.

26. There is therefore no dispute as between UK Anti-Doping and the Player as to the claim made by the Player that he had no intent to enhance his sporting performance by the use of cannabis. For completeness sake, UK Anti-Doping does not believe that cannabis can be used to mask the use of a performance-enhancing substance, cannabis not being known as a masking agent.

Fault

27. Anti-Doping Rule M.4 provides that the sanction to be applied in respect of this Anti-Doping Rule Violation depends on “*the Participant’s degree of fault*”, which is expressed to be “*the criterion considered in assessing any reduction of the period of Ineligibility*”. In turn, the relevant Commentary in the World Anti-Doping Code says that “[i]n assessing the Athlete’s or other Person’s degree of fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behavior”.
28. UK Anti-Doping notes that the CAS has made it clear that the expected standard of behaviour of an athlete is that he or she should do everything he or she can to avoid ingesting a Prohibited Substance. This is a standard that applies to all athletes who are subject to Code-compliant anti-doping rules. In turn, this will give rise to a number of practical responsibilities in terms of the actions that an athlete should undertake to avoid such ingestion. The extent of these actions will depend on the circumstances of each case, and in particular, the specifics applicable to each individual athlete.
29. The Player has failed in respect of his duty to prevent a Prohibited Substance entering his system. He voluntarily ingested cannabis. The Anti-Doping Rules, and the Commentary to the Code, require the Athlete to explain why he departed from this standard, and, on the basis of that explanation, for a sanction to be imposed.
30. The Player has advanced the following points in mitigation in this regard:

Education and Awareness

31. As to fault, UK Anti-Doping has considered the following: the Player has been competing in wheelchair tennis since late 2009. He commenced playing tennis as a means of remaining active after a serious injury. He competes at a local club once or twice per week, and has also competed at fifteen tournaments. The player advised UK Anti-Doping, and the LTA confirmed, that the majority of these tournaments were lower-level competitions. At times when the Player competed in higher-level events, it was because other elite players were not present and thus a position was available for his participation. This was the case for the event he was tested at on 27 May 2012. The Player was ranked 464 in the world for wheelchair tennis by the International Tennis Federation, and is not part of the LTA wheelchair tennis Performance Team. He has received no anti-doping education and has never been previously tested. He was not aware that cannabis was a prohibited substance within sport.

No Performance Enhancement

32. Cannabis is not restricted in respect of out-of-competition use. UK Anti-Doping accepts the Athlete’s assertion and evidence to the effect that he received no performance enhancing effect from the use of cannabis, which in any event was used out of competition.

Sanction

33. UK Anti-Doping has noted the comments made by the CAS in recent decisions involving the application of Article 10.4 of the World Anti-Doping Code, and the application of Article 10.4 in a number of national decisions. It has paid close attention to the factors taken into account by both the CAS and national-level arbitral bodies when specifying sanctions in such matters.

34. In the circumstances, UK Anti-Doping has (pursuant to Anti-Doping Rule K.2.3) specified that the Consequences in respect of the Athlete's anti-doping rule violation should be a period of Ineligibility of three months. The Athlete accepts this sanction.

Disqualification of Results

35. Article L.1 of the Anti-Doping Rules states that:

An Anti-Doping Rule Violation committed by a Player in connection with or arising out of an In-Competition test automatically leads to the Disqualification of the result obtained by the Player in the Competition in question, with all resulting consequences, including forfeiture of any medals, titles, computer ranking points and Prize Money obtained in that Competition. In addition, further results obtained by the Player in the same or subsequent Events may be Disqualified, in accordance with Article M.1 (same Event) and/or Article M.8 (subsequent Events).

36. Article M.8 of the Anti-Doping Rules provides that:

In addition to the Disqualification, pursuant to Articles L and M.1, of the results in (respectively) the Competition and Event that produced the Adverse Analytical Finding, all other competitive results obtained from the date of the Sample in question was collected (whether In-Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Ineligibility period shall, unless fairness requires otherwise, be Disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, computer ranking points and Prize Money.

37. The Player has not competed in any competition in which he has obtained individual results since the completion that resulted in these proceedings, and as such Articles L.1 and M.8 do not apply.

Period of Ineligibility

38. Article M.9.3 of the Anti-Doping Rules provides that:

The period of Ineligibility shall start on the date that the decision is issued, provided that:

(a) any period of Provisional Suspension served by the Player (whether imposed in accordance with Article K.4 or voluntarily accepted in accordance with Article K.4.8(a)) shall be credited against the total period of Ineligibility to be served. To get credit for any period of voluntary Provisional Suspension, however, the Player must have given written notice at the beginning of such period to UKAD, in a form acceptable to UKAD (and UKAD shall copy that notice to every other Person entitled to receive notice of a potential Anti-Doping Rule Violation by that Player)...;

39. The Player voluntarily provisionally suspended himself in writing to UK Anti-Doping on 13 July 2012. In accordance with Article M.9.3 of the Anti-Doping Rules, the Player's period of Ineligibility therefore commences on 13 July 2012 and expires at midnight on 12 October 2012.
40. During the period of Ineligibility, in accordance with Anti-Doping Rule M.10, the Player shall not be permitted to participate in any capacity in a competition or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened or authorised by:
- i. the LTA or by any body that is a member of, or affiliated to, or licensed by the LTA;
 - ii. any Signatory (as that term is defined in the Anti-Doping Rules);

- iii. any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation; or
 - iv. any professional league or any international- or national-level Event organisation.
41. The Player, the LTA, the International Tennis Federation and WADA have a right of appeal against this Decision or any part of it in accordance with Anti-Doping Rule K.6.
42. The disposition of these proceedings on the terms set out above will be publicly announced via UK Anti-Doping's website media release after any appeal period by third parties has expired and no appeal has been filed, or any appeal has been finalised

Summary

43. Accordingly, for the reasons given above, UK Anti-Doping has issued this Decision, pursuant to Anti-Doping Rule K.2.3, which records that:
- a. An Anti-Doping Rule Violation according to Article C.1 has been established;
 - b. A period of Ineligibility of three months shall be the consequences imposed pursuant to Article M.4;
 - c. That period of Ineligibility is deemed to have commenced as from 13 July 2012, and will therefore end at midnight on 12 October 2012; and
 - d. The Player's status during the period of Ineligibility shall be as provided in Article M.10.

Dated this 23rd day of August, 2012.