

ISSUED DECISION

In the Matter of:

UK ANTI-DOPING LIMITED

and

Mr BRENT HUGHES

Relating to:

Disciplinary Proceedings under the Anti-Doping Programme of Ice Hockey UK

This is an Issued Decision as between UK Anti-Doping Limited (“UK Anti-Doping”) and Mr Brent Hughes (the “Athlete”) relating to an Anti-Doping Rule Violation arising from the Ice Hockey UK (“IHUK”) Anti-Doping Rules (the “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 IHUK, the governing body for the sport of ice hockey in the United Kingdom.
2. The Athlete is a thirty year old ice hockey player originally from Canada. At all material times the Athlete was a participant in the sport of ice hockey in the UK and subject to the Anti-Doping Rules.
3. The Rules provide as follows:

“The Management Board of Ice Hockey UK hereby resolves that the anti-doping rules of Ice Hockey UK as set out in “IHUK Anti-Doping Rules 2007” shall, as from the 1st of January 2009, stand repealed and shall be replaced by the following rule:

‘The anti-doping rules of Ice Hockey UK are the UK Anti-Doping Rules published by the Drug-Free Sport Directorate of UK Sport (or its successor), as amended from time to time. Such rules shall take effect and be construed as the rules of Ice Hockey UK.’

1. In the UK Anti-Doping Rules, the term ‘NGB’ should be read as ‘Ice Hockey UK’.

2. In the UK Anti-Doping Rules, the term ‘International Federation’ should be read as ‘the International Ice Hockey Federation’.”

4. On 18 February 2012, the Athlete competed in the Elite Ice Hockey League match between Dundee Stars and Edinburgh Capitals. Following competition, the Athlete provided a urine sample for Doping Control purposes (the "Sample").
5. The Sample was submitted for analysis to the Drug Control Centre at King's College, London, a World Anti-Doping Agency ("WADA") accredited laboratory. The analysis revealed the presence of furosemide (the "Prohibited Substance").
6. The Prohibited Substance is included in the WADA 2012 Prohibited List (the "Prohibited List") (S.5 Diuretics and other masking agents).

The Charge

7. On 18 June 2012, the Athlete 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 2.1. Prior to issuing the Notice of Charge, UK Anti-Doping satisfied itself that the Athlete did not possess, nor had he ever possessed, a Therapeutic Use Exemption ("TUE") in respect of the Prohibited Substance, 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.
8. The Notice of Charge explained the facts relied on in support of the allegation that the Athlete 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.
9. The Notice of Charge imposed a Provisional Suspension upon the Athlete, which took effect from 18 June 2012.
10. On 27 June 2012, the Athlete admitted the Charge in writing and waived his right to have the B Sample tested (also in writing).
11. The Athlete thereby admitted the commission of an Anti-Doping Rule Violation pursuant to Article 2.1 of the Anti-Doping Rules.

Consequences

12. Article 10.2 of the Rules provides as follows:

10.2 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 2.1 (presence of a Prohibited Substance or any of its Metabolites or Markers), Article 2.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or Article 2.6 (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 10.4 and 10.5) or the conditions for increasing the period of Ineligibility (as specified in Article 10.6) are met.

13. Where an Athlete is found to have committed an Anti-Doping Violation under Article 2.1 of the Rules, and such offence is the Athlete's first Anti-Doping Violation, a period of Ineligibility of two (2) years must be imposed pursuant to Article 10.2 ("the Standard Sanction").
14. This is the Athlete's first doping offence.

15. The Athlete did not seek to rely in mitigation on Article 10.5.1 or 10.5.2 of the Rules. The Athlete has sought to mitigate the Standard Sanction by way of Article 10.4.

16. Article 10.4 of the Rules provides that:

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances

10.4.1 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 Athlete's sport performance or to mask the Use of a performance-enhancing substance, the period of Ineligibility established in Article 10.2 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.

10.4.2 To qualify for any elimination or reduction under this Article 10.4, the Participant 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 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.

17. Furosemide is a "Specified Substance" in the Prohibited List.

The Athlete's Explanation:

How substance entered body

18. The Athlete provided detailed medical evidence from his doctors that sets out his history of the use of furosemide. The Athlete suffers from a diagnosed underactive thyroid condition which results in fluid retention and causes swelling in his extremities. He was prescribed furosemide by his doctor as treatment for this condition. His doctor is also the doctor for his ice hockey club.

19. UK Anti-Doping accepts the Athlete'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 the Prohibited Substance into the Athlete's system.

No intent to enhance performance or mask use of a substance

20. The Athlete asserts that he did not ingest the Prohibited Substance with a view to enhancing his performance or mask the use of a performance enhancing substance.

21. Article 10.4.2 of the Rules require that the Athlete "*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 Athlete's sport performance or mask the Use...*".

22. 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 Athlete*".

23. Following notification of the Adverse Analytical Finding, the Athlete made applications for a TUE on 20 March 2012, 24 March 2012 and 28 March 2012. The TUE applications and subsequent

appeals were rejected. On 4 April 2012, UK Anti-Doping provided the athlete with further information required for a future TUE application, which remains outstanding.

24. The TUE applications submitted by the Athlete provide details of the diagnosis of the Athlete's condition, as well as the medical examinations undertaken by the Athlete with his doctors, and also of the substances prescribed as treatment for his condition.
25. UK Anti-Doping accepts the material forwarded as part of the TUE application as evidence for the Athlete having no intent to enhance performance or mask the use of other substances when having ingested the Prohibited Substance. UK Anti-Doping accepts that he used it solely for the therapeutic reasons prescribed to him by his doctors, as detailed in the medical documentation provided.
26. There is therefore no dispute as between UK Anti-Doping and the Athlete as to intent to enhance sporting performance or mask the use of other prohibited substances.

Fault

27. Anti-Doping Rule 10.4 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 Athlete has failed in respect of his duty to prevent a Prohibited Substance entering his system. He voluntarily ingested furosemide; albeit on doctors' advice. 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 Athlete has competed in the UK's Elite Ice Hockey League since 2008. He used the Prohibited Substance upon doctors' advice. He declared on his doping control form that he took "water pills" on prescription, and that he had taken tablets for a hypo-thyroid condition. There was no attempt to conceal or misdirect. The Athlete has previously been provided with an anti-doping booklet, and has also attended a team seminar on anti-doping. He has never been tested in the UK prior to the current test, and he was not aware of the TUE application process. UK Anti-Doping accepts the Athlete's assertion and evidence that it was used purely for medical purposes.
31. UK Anti-Doping accepts that the Athlete will have derived no performance-enhancing benefit from the use of the Prohibited Substance. The Prohibited Substance is not believed to be performance-enhancing for the sport of Ice Hockey.

Sanction

32. 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.

33. In the circumstances, UK Anti-Doping has (pursuant to Anti-Doping Rule 7.5.4) specified that the Consequences in respect of the Athlete's anti-doping rule violation should be a period of Ineligibility of one (1) month, commencing from the date of his provisional suspension, namely 18 June 2012 and therefore expiring at midnight on 17 July 2012.

Disqualification of Results

34. Article 9.1 of the Rules states that:

An Anti-Doping Rule Violation committed by a Athlete in connection with or arising out of an In-Competition test automatically leads to the Disqualification of any individual results obtained by the Athlete in the Competition in question, with all resulting consequences, including forfeiture of any medals, titles, points and prizes.

35. Article 10.8 of the Rules provides that:

Unless fairness requires otherwise, in addition to the automatic Disqualification of results under Article 9.1 and Article 10.1, any results obtained by the Athlete, in Competitions taking place after the date the Sample in question was collected or other Anti-Doping Rule Violation occurred, shall be Disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, points and prizes.

36. The Athlete did not obtain individual results and as such Article 9.1 does not apply. Article 10.8 does not apply as the Athlete has no subsequent results.
37. The Athlete, IHUK, the International Ice Hockey Federation and WADA have a right of appeal against this Decision or any part of it in accordance with Article 13.4.
38. 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

39. Accordingly, for the reasons given above, UK Anti-Doping has issued this Decision, pursuant to Anti-Doping Rule 7.5.4, which records that:
- a. An Anti-Doping Rule Violation according to Article 2.1 been established;
 - b. A period of Ineligibility of one (1) month, commencing from the date of his provisional suspension, namely 18 June 2012 and therefore expiring at midnight on 17 July 2012 shall be the consequences imposed pursuant to Article 10.4.

Dated this 14th day of September, 2012.