

ISSUED DECISION

In the Matter of:

UK ANTI-DOPING LIMITED

- and -

JONATHAN BULLOUGH

Relating to:

Disciplinary Proceedings under the Anti-Doping Rules of the British Weightlifting Association

This is an Issued Decision as between UK Anti-Doping Limited (“UK Anti-Doping”) and Mr Jonathan Bullough (the “Athlete”) relating to an Anti-Doping Rule Violation arising from the British Weightlifting Association (the “BWL”) Anti-Doping Rules (the “Anti-Doping Rules” or “ADR”).

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 BWL, the governing body for the sport of weightlifting in Great Britain.
2. The Athlete is a professional personal trainer, specialising in Crossfit. At all material times he was a member of BWL and so subject to the Anti-Doping Rules.
3. On 24 November 2012, the Athlete provided an In-Competition sample (1096423) for doping control purposes at the BWL Northern England Championships, pursuant to the Anti-Doping Rules (the “Sample”).
4. The Sample was submitted for analysis to the Drug Control Centre, King’s College London, a World Anti-Doping Agency (“WADA”) accredited laboratory (the “Laboratory”).
5. On 14 December 2012, the Laboratory reported to UK Anti-Doping that an Adverse Analytical Finding in respect of methylhexanamine (“MHA”) had been made in respect of the Sample. MHA is a Prohibited Substance In-Competition, and is included in S6.b of WADA’s 2012 List of Prohibited Substances (the “Prohibited List”).
6. The Athlete did not possess, nor has he ever possessed, a therapeutic use exemption in respect of MHA. Further, UK Anti-Doping identified 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.
7. On 18 December 2012, the Athlete was issued with a Notice of Charge by UK Anti-Doping concerning the commission of an Anti-Doping Rule Violation pursuant to ADR Article 2.1 (Presence of a Prohibited Substance in an Athlete’s Sample). The Notice of Charge explained

the facts relied on in support of the allegation, the details of the charge, the consequences of an admission or proof of an Anti-Doping Rule Violation, and the procedure for analysis of the B Sample.

8. The Notice of Charge also imposed a Provisional Suspension upon the Athlete, which took effect as from that date.
9. On 11 February 2013, the Athlete admitted the Charge in writing. He also waived his right to have the B Sample tested.
10. ADR Article 7.5.4 provides:

“In the event that the Participant admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by [UK Anti-Doping] (or is deemed to have done so in accordance with the last sentence of Article 7.5.1), neither B Sample analysis nor a hearing is required. Instead, [UK Anti-Doping] shall promptly issue a decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences, shall send notice of the decision to the Participant and to each Interested Party, and shall publish the decision in accordance with Article 14.”

11. UK Anti-Doping has specified the Consequences in respect of the Anti-Doping Rule Violation to be a period of Ineligibility of twelve (12) months, for the reasons explained below. The Athlete has acceded to the specified Consequences. This decision is issued pursuant to ADR Article 7.5.4.

Consequences

12. ADR Article 10.2 provides:

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

For an Anti-Doping Rule Violation under Article 2.1 (presence of a Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of a Prohibited Substance and/or a Prohibited Method) that is the Participant’s first violation, a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of Ineligibility (as specified in Article 10.4 and/or Article 10.5) or 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 Rule Violation under ADR Article 2.1, and such offence is the athlete’s first Anti-Doping Rule Violation, a period of Ineligibility of two (2) years must be imposed pursuant to ADR Article 10.2 (“the Standard Sanction”). This was the Athlete’s first doping offence.
14. UK Anti-Doping has examined whether or not the Standard Sanction can be replaced by way of ADR Article 10.4. ADR Article 10.4 provides:

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, and it is the Participant’s first violation, the period of Ineligibility established in Article 10.2 shall be replaced 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 the Athlete's sport performance or 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.

15. MHA is a "Specified Substance" in the Prohibited List.
16. Following receipt of the Charge, the Athlete explained how MHA entered his system, and the circumstances in which that ingestion came about. On 11 March 2013, the Athlete participated in an interview with UK Anti-Doping at which this explanation and account were discussed in detail. The interview was recorded and transcribed, and the Athlete cautioned as to the consequences of providing false or misleading evidence to UK Anti-Doping. The Athlete's evidence and account is summarised as follows:
 - a) The Athlete is a self-employed personal trainer, specialising in Crossfit. Crossfit is a strength and conditioning program with the stated goal of improving fitness by combining movements such as sprinting, rowing, weightlifting and bodyweight exercises. The Athlete is engaged in the business of providing personal training services with his business partner, and operates from a studio near Wigan, Lancashire. He has received some training as a coach.
 - b) The Athlete is supplied with supplements including protein shakes and vitamin and mineral supplements by a local business. In or about September 2012, the Athlete was supplied with a number of products by this business. As part of that consignment, the supplier sent the Athlete a free sample of a product called "Warrior Blaze". The Athlete often received such free samples.
 - c) Warrior Blaze ("the Supplement") is described as a "Hyper-strength thermogenic fat burner". The Athlete tried the Supplement and found that it was a useful occasional alternative to coffee when it came to preparing for his own personal training. He did not use the Supplement before training his clients. Rather, he used the Supplement prior to his own training sessions to counteract fatigue resulting from his professional training sessions.
 - d) The Athlete became a member of BWLA in or about July 2012. He joined BWLA with a view to achieving a coaching certification as regards weight-lifting (weight-lifting being a component of Crossfit training). He entered the BWLA Northern England Championships ("the Championships") in November 2012, primarily to enjoy the experience of weight-lifting competition. The Championships were held on 24 November 2012. The Athlete placed first in the 77 kilogramme category. He was required to provide the Sample, which he did. This was his first experience of the anti-doping process.
 - e) The Athlete did not disclose the use of the Supplement on his Doping Control Form at the time he provided the Sample. He explained that this was because he had been advised, in effect, to disclose anything which might have constituted "doping". He disclosed the use of "3 measured doses of blue astma (sic) inhaler 24 hours prior". He did not disclose the use of the Supplement. He explained that this was because he did not perceive his use of the Supplement posed a doping risk.
 - f) The Athlete said that he trained on 22 November 2012, and that prior to his training session, he used the Supplement. He explained that the training session was routine, and did not require any special levels of exertion or effort given the proximity of the Championships. The Athlete's use of the Supplement on 22 November 2012 was witnessed by his business and training partner.
17. The packaging of the Supplement includes in the product ingredient labelling the words "1,3-Dimethylamylamine (Geranium Stem)". This is a synonym of MHA. The concentration of MHA found in his Sample was approximately 100 ng/mL.

18. UK Anti-Doping conducted an interview with the Athlete's business partner regarding the Athlete's use of the Supplement. That interview was recorded and the Athlete's business partner was also cautioned as to the potential consequences of providing false or misleading evidence. The Athlete's business partner recalled that the Athlete had used the Supplement on a number of occasions (as had he) prior to his own training sessions, as an alternative to using coffee as a pre-training "pick-me-up". He recalled the Athlete using it on 22 November. The Athlete was not present during that interview but has been provided with a transcript of the interview, and raises no dispute in respect of the evidence provided by his business partner.
19. UK Anti-Doping does not dispute that this is a matter in respect of which ADR Article 10.4 applies. In particular:
- It is satisfied that the Athlete has established, on a balance of probabilities standard, that MHA entered his system by way of the use of the Supplement;
 - It does not contend that the use of MHA and/or the Supplement was undertaken with the aim of masking the use of another Prohibited Substance;
 - The Supplement was used by the Athlete in connection with a training session which took place two days before the Championships. It was not used to enhance performance in the Championships.
 - The Athlete's absence of intent to enhance his performance is corroborated by the evidence provided by his business partner, and the level of MHA present in his Sample, that level being consistent with the use of the Supplement two days prior to the Championships.
20. As regards the Consequences, ADR Article 10.4.2 states that the Athlete's "*degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.*"
21. ADR Article 1.3.1 requires that every athlete must:
- "acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules, including (without limitation) being aware of what constitutes an Anti-Doping Rule Violation and of what substances and methods are on the Prohibited List;*
- And also that every athlete must
- to comply with these Rules in all respects, including:*
- i. taking full responsibility for what he/she ingests and uses;"*
22. UK Anti-Doping takes the view that the standard of behaviour expected from the Athlete was to make sure that he competed without there being any Prohibited Substances in his system. Both the Code and a number of CAS cases are very clear in terms of an athlete's responsibilities vis-à-vis competing with Prohibited Substance in his or her system - every athlete has a duty under the Code to keep his or her system clean of any such substances.
23. In this regard, CAS has noted that the Code "*imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. ... The Panel underlines that this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition. ... It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified.*" (FIFA & WADA, CAS 2005/C/976 & 986, opinion dated 21 April 2006 § 73 and 74). This was echoed in CAS's remarks in the *Kendrick* case, when it said that an athlete's fault must be "*measured against the fundamental duty which he or she owes under the ... WADC to do everything in his or her power to avoid ingesting any Prohibited Substance*" (*Robert Kendrick vs ITF*, CAS 2011/A/2518, § 10.14).

24. These requirements are of fundamental importance. If an athlete is planning on consuming a product (such as a supplement) that is going to change his body's chemistry – for example, by making him or her feel “boosted” in some way, then that athlete should be cautious. That caution should stem from the realisation that many substances are banned because they can enhance sports performance precisely by changing the body's chemistry. If an athlete is planning on using a product to improve sport performance in some way, then there is an obvious risk that it might contain a problematic substance. That caution must be acted on.
25. Once the Athlete became a member of BWLA and became subject to the ADR, he was under an obligation to understand these responsibilities and duties. It is clear that the Athlete departed from this expected standard, and that that departure resulted in the Adverse Analytical Finding. UK Anti-Doping does not accept that it is a sufficient excuse to rely on ignorance of either the Anti-Doping Rules or the risks that supplements pose. This departure is particularly troubling given that the Athlete is a sport professional and provides training and fitness services and advice to his clients. He should have been aware of the caution that should be adopted when using supplements.
26. The Athlete has provided an explanation as why he fell short in respect of this standard. In this regard, he has submitted that the following factors should be taken as mitigation in his favour:
 - a) He had never been advised that supplements were a risk as far as the commission of an anti-doping rule violation is concerned, and so was unaware that his use of the Supplement was putting him at such risk. He was wholly inexperienced when it came to anti-doping matters generally.
 - b) He did not use the Supplement in connection with his actual competition, but rather in connection with his training.
 - c) The concentration levels of MHA in the Sample were very low, and would not have had any effect on his actual performance (this factor is significant given that he won his competition).
27. UK Anti-Doping accepts that these factors are relevant and that the Athlete was not using MHA deliberately. It is highly likely that he made a genuine mistake in thinking that the Supplement was “safe” to use. However, the use of supplements and the risks (in both general health and anti-doping terms associated with such use) have received a great deal of publicity in the last year or more. The use of supplements in connection with sports preparation and training is now widely known to be a doping risk, and a responsible athlete should not have used a free sample of a supplement so close to the date of competition without taking even the most basic of steps to ensure that the use would not cause any problems.
28. UK Anti-Doping also takes the view that the fact that the Athlete is a sport professional providing training and fitness services to clients does have to be taken into account. Supplement use is now widespread and it is far from inconceivable that the Athlete's clients may have sought some form of advice from him regarding supplement use. In this regard we do not see the absence of any anti-doping education as being particularly relevant: he is at fault for a basic failure to see that he should, given his profession, have done much more to understand the impact and effect of the active ingredients contained within the supplements he was using.
29. UK Anti-Doping has therefore specified that the Consequences to be applied in this matter are that a period of Ineligibility of twelve months, as well as the mandatory Disqualification, should be applied. The Athlete has accepted those Consequences.
30. ADR Article 9.1 states:

An Anti-Doping Rule Violation committed 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.

31. The Athlete's results at the Championships are therefore disqualified. He has not competed in any competition since the Championships, and so ADR Article 10.8 does not therefore apply. In the circumstances, UK Anti-Doping has applied ADR Article 10.9.2 and specifies that the period of Ineligibility will run from the date of Sample Collection.

Summary

32. UK Anti-Doping has issued this Decision, pursuant to ADR Article 7.5.4, which records that:

- a) An Anti-Doping Rule Violation in accordance with ADR Article 2.1 has been committed;
- b) A period of Ineligibility of one year shall be the Consequences imposed pursuant to ADR Article 10.4;
- c) That period of Ineligibility is deemed to have commenced on 24 November 2012 and will expire on 23 November 2013; and
- d) The Athlete's status during this period of Ineligibility shall be as set out in ADR Article 10.10.
- e) The Athlete's results at the Championships are Disqualified, along with all resulting consequences, including forfeiture of any medals, titles, points and prizes; and
- f) Pursuant to ADR Article 10.10.4, during the period of Ineligibility the Athlete shall remain subject to the Anti-Doping Rules; and

The disposition of these proceedings on the terms set out above will be publicly announced via UK Anti-Doping's website.

This decision may be appealed by the Athlete, the BWLA, the International Weightlifting Federation or the World Anti-Doping Agency.

Dated this 24th day of April, 2013.