



Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
Internal Regulations governing Anti-Doping
in the matter

Gerrod Henderson
(born 30 October 1978)

("the Player")
(Nationality: USA)

Whereas, the Player underwent a doping test on 25 October 2008 in Włocławek (Poland) after the Polish League game between Anwil Włocławek and PBG Basket Poznan;

Whereas, the analysis of the Player's sample was conducted at the Laboratory of Warsaw (Poland) which is a WADA-accredited laboratory. The sample showed the presence of furosemide;

Whereas, the Player waived his right to request an analysis of the B sample;

Whereas, the Disciplinary Commission of the Polish Basketball Federation decided to impose a two years' suspension on the Player starting from 25 October 2008;



Whereas, on 22 January 2009 the Player was heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, President of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Mr. Amir Ibrahim, FIBA's sport development assistant and Dr. Dirk-Reiner Martens, FIBA Legal Advisor were also in attendance;

Whereas, the Player

- did not contest the result of the test;
- argued that an injury in his back during the 2006-07 season had caused him to refrain from playing basketball for a period longer than eight months and to gain significant weight;
- argued that he purchased "over the counter" in the USA a package of "water weight pills" in order to lose weight;
- argued that the presence of furosemide in his sample shall be attributed to the use of the said pills;
- argued that he was unaware of the fact that "water weight pills" may contain prohibited substances;
- stated that during the entire 2007-08 season and at the beginning of the 2008-09 season he used such pills 3 or 4 times per week in order to control his weight;
- stated that since he was suspended in Poland he did not participate in any competition organised by FIBA or by a national member federation affiliated to FIBA;
- stated that he had no intention to enhance his performance or mask the use of a prohibited substance.

Now, therefore the Panel takes the following:

DECISION

A period of one (1) year ineligibility, i.e. from 25 October 2008 to 24 October 2009, is imposed on Mr. Gerrod Henderson.



Reasons:

1. The Panel shall first deal with the issue of the applicable regulations. In compliance with the revised version of the World Anti-Doping Code (the “2009 WADA Code”), FIBA has enacted the FIBA Internal Regulations governing Anti-Doping (the “New Rules”) which have substituted the FIBA Internal Regulations governing Doping Control (the “Old Rules”) and which entered into force on 1 January 2009.
2. Article 16.6 of the New Rules reads as follows:

“16.6 These Anti-Doping Rules shall come into full force and effect on 1 January 2009 (the “Effective Date”). They shall not apply retrospectively to matters pending before the Effective Date; provided, however, that:

16.6.1 Any case pending prior to the Effective Date, or brought after the Effective Date based on an anti-doping rule violation that occurred prior to the Effective Date, shall be governed by the predecessor to these Anti-Doping Rules in force at the time of the anti-doping rule violation, subject to any application of the principle of lex mitior by the hearing panel determining the case.”

(emphasis added by the Panel)

Besides this express mention in the New Rules and in Article 25 of the 2009 WADA Code, the application of the principle of *lex mitior* in doping cases has also been established by the Court of Arbitration for Sport (“CAS”):

“This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions assumed to be less severe, even when the events in question occurred before they came into force.”

[CAS Advisory Opinion 94/128 (UCI and CONI), CAS Digest I, p.509]



3. In the case at hand, the Player committed an anti-doping rule violation prior to 1 January 2009 since a prohibited substance (furosemide) was found in his urine sample. Pursuant to Article H.7.2.1.1 of the Old Rules furosemide was listed in WADA's 2008 Prohibited List (the "Old List") under letter "S5. Diuretics and other masking agents". Also, under article H.7.8.2.1 of the Old Rules, in the absence of exceptional circumstances a period of two years' ineligibility was to be imposed when a prohibited substance such as furosemide was present in a player's sample.

4. However, Article 4.4.2 of the New Rules provides:

"4.2.2 Specified Substances

For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be "Specified Substances" except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances."

5. WADA's 2009 Prohibited List (the "New List") in force as from 1 January 2009 provides:

"All Prohibited Substances shall be considered as "Specified Substances" except Substances in classes S1, S2, S.4.4 and S6.a, and Prohibited Methods M1, M2 and M3. [...]"

S5. Diuretics and other masking agents [...] Diuretics include [...] furosemide..."

Consequently, furosemide is considered a specified substance under the New List.

6. Further, Article 10.4 of the New Rules provides:

"Where a Player or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Player's sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Player or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."

7. Therefore, applying the principle of *lex mitior*, the New Rules apply in the present case and furosemide shall be treated as a Specified Substance.
8. The Panel finds that the Player acted negligently by ingesting a medication without ensuring that it does not contain a prohibited substance. FIBA and WADA have released numerous public warnings with regards to supplements or medication that can be purchased "over the counter" in some countries but may contain prohibited substances. On the other hand the Panel notes that the Player did not hide the use of the said prohibited substance at any stage of the proceedings and has been consistent in his pleadings. He established that he was using "water weight pills" as a means to lose weight after a serious injury which threatened to put an end to his career rather than to enhance his performance or to mask the use of a performance enhancing substance.
9. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of one (1) year.
10. The Panel deems fair pursuant to Article 10.9 of the New Rules that the period of ineligibility is to start on 25 October 2008, as he was unable to play professional basketball since that date due to the suspension imposed by the Polish Basketball Federation.
11. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Fédération Internationale
de Basketball



FIBA

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Geneva, 26 January 2009

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel