



Decision

by

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

James Clough Gist III
(born 26 October 1986)

hereafter:
(“the Player”)

(Nationality: U.S.A.)

Whereas, the Player underwent an in-competition doping test on 1 June 2011 in Belgrade, Serbia, after the end of the game Partizan vs Hemofarm held in the framework of the Serbian 1st division championship;

Whereas, the analysis of the Player's sample (sample No: 2582529) was conducted at the WADA-accredited Laboratory in Seibersdorf, Austria (“Laboratory”). On 20 June 2011 the Laboratory informed the Antidoping Agency of Serbia (“ADAS”) that the analysis of the Player’s sample showed the presence of the prohibited substance “*Carboxy-THC*” in a concentration (27,5 ng/ml) higher than the threshold (18 ng/ml) established by the 2011 WADA List of prohibited substances;

Whereas, the Player did not request the analysis of the B sample;

Whereas, on 12 July 2011 the Serbian Basketball Federation (“SBF”) wrote to ADAS as follows:

“After receipt of this ADRV case from ADAS – Basketball Federation of Serbia, as first instance body, tried to conduct result management of case through our Disciplinary Committee.

However, as the case involved foreign citizen, which [sic] is no longer under jurisdiction of Basketball Federation of Serbia (his contract expires), we are not in possibility to conduct result management. Please provide this case to authorized organisation – FIBA World, Geneva, Switzerland.”

Whereas, by letter dated 15 July 2011 ADAS informed FIBA that the Player was no longer under the authority of the SBF and forwarded to FIBA all documentation related to this case;

Whereas, by letter dated 19 July 2011 FIBA informed the Player that the case was submitted to the FIBA Disciplinary Panel and provided to him the option of being heard either in person (for which a hearing in FIBA’s headquarters in Geneva would have to be organised) or via telephone conference on 4 August 2011;

Whereas, on 27 July 2011 the Player confirmed his participation in a hearing by telephone conference and on 31 July 2011 informed FIBA that his agents would also take part in the hearing;

Whereas, on 4 August 2011 the Player – assisted by his agents Messrs. Bill Duffy and Billy Kuenziger – was heard via telephone conference by a FIBA Disciplinary Panel composed of Ms. Eleonora Rangelova, member of FIBA’s Legal Commission and of Dr. Heinz Günter, President of FIBA’s Medical Commission; Ms. Virginie Alberto, FIBA Anti-Doping Officer, Mr. Amir Ibrahim, FIBA Anti-Doping Assistant as well as Dr. Dirk-Reiner Martens, FIBA Legal Advisor, were in attendance;

Whereas, at the hearing the Player:



- did not contest the result of the test;
- admitted the violation;
- stated that he smoked a cigarette with cannabis approximately a week before the test, without any intention to enhance his performance; it happened after his team (Partizan) had lost the semi-final which was a contributing factor alongside other factors of a private nature;
- apologised for the adverse analytical finding and stated that this was a one-off event, since he is not a regular smoker;
- asserted that this was his first anti-doping rule violation since he had never failed a drug test before. The test on 1 June was his first test since he joined Partizan in October 2010.
- stated that he had not played any official games since 8 June 2011 and that he had recently entered into a contract with the Turkish club Fenerbahce for the next (2011/2012) season;

Now, therefore, the Panel takes the following:

DECISION

A period of three (3) months' ineligibility, i.e. from 9 June 2011 to 8 September 2011, is imposed on Mr. James Clough Gist III.

Reasons:

1. Article 13.7.5 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR") edition 2010 reads as follows:

"In the event of an anti-doping rule violation within the country of a national member federation, the Disciplinary Panel is authorised to impose a provisional

suspension and/or a sanction according to these Regulations if the national member federation fails to do so. The implicated Person has the right to be heard. He may be suspended provisionally before the hearing.”

2. Considering that neither ADAS nor SBF took a decision on the Player’s case but rather decided to forward the case to FIBA, the FIBA Disciplinary Panel is competent to hear this matter.

3. Article 2.1 of the FIBA ADR reads as follows:

“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample.

2.1.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player’s part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]”

4. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since a metabolite of THC, a prohibited substance listed in WADA's 2011 Prohibited List (the “2011 Prohibited List”) under letter S.8 (Cannabinoids) was found in his urine sample. This fact remained uncontested.

5. According to Article 10.2 of the FIBA ADR

“The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as

provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility.”

6. According to Article 10.4 of the FIBA ADR:

“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 Players or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

7. In view of the fact that:

- the Player is responsible for the substance found in his body;
- the Player is a 25-year old professional athlete, who played for a top-level European professional club and was therefore aware that cannabis is prohibited; despite that the Player still chose to use cannabis;
- the Player admitted the violation and expressed his regret for his conduct, stating that the use of the substance was an isolated incident and a result of various personal and professional shortcomings;
- the Player had no intention to improve his athletic performance since he used cannabis approximately one week before the next game of his team, which is also evidenced by the rather low concentration of cannabis in his body;
- the Player affirmed that he had committed no previous anti-doping rule violation;

and based on previous practice, the Panel holds that it is appropriate to impose on the Player a sanction of three months.

8. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start the day after the Player's last official game, i.e. on 9 June 2011.
9. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 10 August 2011

On behalf of the FIBA Disciplinary Panel

Eleonora Rangelova

President of the Disciplinary Panel