



Decision

by

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

De'Andre Walker
(born 28 December 1977)

hereafter:
("the Player")

(Nationality: Guam)

Whereas, the Player underwent an in-competition doping test on 8 September 2011 in Noumea, New Caledonia, on the occasion of the 2011 Pacific Games;

Whereas, the analysis of the Player's sample (sample No: 2653614) was conducted at the WADA accredited laboratory of the French NADO in Châtenay-Malabry, France ("Laboratory"). The analysis of the sample showed the presence of the prohibited substance "*4-methylhexanamine*" established by the 2011 WADA List of prohibited substances.

Whereas, by letter dated 13 October 2011 the Oceania Regional Anti-doping Organization ("ORADO"), which conducted the afore-mentioned test, informed the Player's National Olympic

Committee ("Guam NOC") about the adverse analytical finding and about his right to request the analysis of bottle B. In the same letter the ORADO stated *inter alia* the following:

"[...] Specifically related to the 2011 Pacific Games, the presence of 4-Methylhexaneamine may result in the disqualification of the athlete from the 2011 Pacific Games and annulment of all results. In addition, all relevant documents will be sent to the respective International Federation for further action on their part. [...]"

Whereas, by letter dated 20 October 2011 the ORADO informed the Guam NOC about the next steps of the procedure, including the Player's right to a fair and impartial hearing, and stated *inter alia* the following:

"[...] The Pacific Games Council is in receipt of your communication on 16th October 2011 where [the Player] has waived his right to the B sample analysis and accepts the A sample analysis [...]."

Whereas, on 28 November 2011 the Executive Director of the Pacific Games Council wrote to the Secretary General of the Guam NOC as follows:

"Dear Secretary-General,

I refer to correspondence from [ORADO] dated 13 October 2011 and GNOC's response dated 20 October 2011 concerning the Adverse Analytical Finding recorded against [the Player], silver medallist in the 2011 Pacific Games Basketball competition.

The Pacific Games Council accepts the recommendation from ORADO and disqualifies Mr. Walker from the 2011 Pacific Games, annuls his results and imposes a two year period of ineligibility from all Pacific Games related activity commencing 8 September 2011.

I would ask that you please make arrangements to immediately return the silver medal immediately to the PGC Secretariat in Noumea, marked to my attention.

Yours sincerely, [...]"

(the "PGC Decision")

Whereas, by email of the same day the World Anti-Doping Agency ("WADA") brought the case to the attention of FIBA and also informed FIBA that, according to the regulations of the Pacific Games, the international federation is competent to impose a sanction which extends beyond the competition in question;

Whereas, by email of 6 December 2011, the Pacific Games Council informed FIBA that "there were no responses in defence from the Player or [GNOC]";

Whereas, by letter dated 19 March 2012, 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 27 March 2012 at 6:15 pm Geneva time;

Whereas, by email of 23 March 2012, the Player confirmed his preference to and participation in a hearing by telephone conference and provided FIBA with a telephone number where he could be reached;

Whereas, on 27 March 2012 at 6.15 pm Geneva time and despite numerous attempts, the Player could not be reached under the telephone number indicated by him. Therefore, the FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member of FIBA's Legal Commission and of Dr. Souheil Sayegh, Deputy-Chairman of FIBA's Medical Commission decided, in the presence also of Ms. Virginie Alberto, FIBA Anti-Doping Officer as well as of Mr. Andreas Zagklis, FIBA Legal Advisor, to provide the Player with another opportunity to submit his position. In this respect, by email of 28 March 2012 FIBA wrote to the Player as follows:

"Dear Mr Walker,

We are contacting you regarding the hearing which took place yesterday evening at 6.15 pm (Geneva time).

The FIBA Disciplinary Panel would like to know the reasons why you were unable

to attend.

In the meantime, you are requested to submit in writing (by email or fax) your position regarding this case together with supporting evidence which can explain the presence of the prohibited substance in your body.

We look forward to hearing from you by no later than Friday 30 March, 12:00 (Geneva time).

Best regards [...]"

Whereas, the Player did not make any submissions until the deadline set by the Panel;

Now, therefore, the Panel takes the following:

DECISION

A period of two years ineligibility, i.e. from 8 September 2011 to 7 September 2013, is imposed on Mr. De'Andre Walker.

Reasons:

1. Article 28 paragraphs 11 and 13 of the Pacific Games Charter read as follows:

"Dispute Resolution

11. The athlete in question may if the Disputes Tribunal so determines, be banned from participating in any capacity in any one or more future Pacific Games or Pacific Mini Games.

[...]

13. Where a case against an athlete accused of being in breach of the regulations in respect of currently banned or prohibited substance and/or techniques is substantiated, the Disputes Tribunal shall communicate its findings to the Executive

Board, the athlete's PGA, the Athlete, WADA and the International Federation concerned which may, notwithstanding the action taken by the Disputes Tribunal, impose such further or other sanctions as it may deem fit."

(emphasis added)

2. It is evident from the above provisions that the Pacific Games Council is authorised to impose sanctions in relation to the Pacific Games (which it did, through the PGC Decision) and that FIBA is competent to impose "further or other" sanctions. Therefore, the FIBA Disciplinary Panel has jurisdiction to decide this case in accordance with Article 8 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR").
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 ADR since 4-methylhexaneamine, a prohibited substance listed in WADA's 2011 Prohibited List (the "2011 Prohibited List") under letter S.6.b (Specified Stimulants) 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 the present case, by not participating in the hearing and not replying to the Panel's initiation for written submissions, the Player failed to bring forward any circumstances in order to demonstrate how the substance entered his body and whether he had an intention to enhance his sport performance. In addition, the Panel notes that on the doping control form the Player noted that he took the medicines "Tylenol (cold)" and "Ibeprophen 800mg" (sic), neither of which can be associated with the prohibited substance found in his urine sample. Consequently, based on the documentation before it the Panel has no choice but to apply the regular sanction provided for in Article 10.2 of the FIBA ADR.

8. In view of the above, the Panel holds that it is appropriate to impose on the Player a sanction of two years' ineligibility.

9. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 8 September 2011, date of sample collection and also date of the Player's last game in the Pacific Games (used also as a starting date in the PGC Decision), since there are no records of the Player's participation in any competitions ever since.

10. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 26 April 2012

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert

President of the Disciplinary Panel