



Decision

by

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

Tyronne McNeal
(born 4 January 1987)

hereafter:
(“the Player”)

(Nationality: U.S.A.)

Whereas, the Player underwent an in-competition doping test organized by the Portuguese NADO (“ADoP”) on 18 November 2011 in Porto, Portugal;

Whereas, the analysis of the Player's sample (sample No: 2600994) was conducted at the WADA-accredited Laboratory in Lisbon, Portugal (“Laboratory”). On 7 February 2012 the ADoP informed FIBA that the analysis of both the A and B samples showed the presence of the prohibited substance methylhexanamine established by the 2011 WADA List of prohibited substances;

Whereas, on 8 March 2012 the Disciplinary Council of the Portuguese Basketball Federation decided to impose on the Player "*a penalty of 2 years of suspension from sport activities*" ("PBF

Decision"). The Player had failed to participate in the disciplinary procedure despite having been invited to do so;

Whereas, on 13 March 2012 the Portuguese Basketball Federation ("PBF") sent to FIBA the file of the case, including an English translation of the PBF Decision;

Whereas, by emails dated 24 and 27 March 2012 the Player requested FIBA's assistance in order to have the PBF Decision reviewed;

Whereas, by letter dated 9 July 2012 FIBA informed the Player that, in accordance with article 13.7 of the FIBA Internal Regulations governing Anti-Doping ("FIBA ADR"), the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon him for the purpose of FIBA competitions 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 16 July 2012;

Whereas, on 16 July 2012 between 5.00 and 5.15 pm Geneva time, the Player did not join the telephone conference. 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 17 July 2012 FIBA wrote to the Player as follows:

"Dear Mr McNeal,

We are contacting you regarding the hearing which took place yesterday evening at 5:00 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 Monday 21 July, 5:00 pm (Geneva time).

Best regards,

Virginie Alberto"

Whereas, by letter dated 19 July 2012 the Player apologized for his non-attendance, since he had not received FIBA's notification of 9 July 2012, and submitted a written statement in which he:

- apologized for his actions;
- did not contest the result of the analysis and admitted the violation;
- stated that, in order to shed excess fat and "not to feel as tired", he bought the energy drink "Jacked3d" (sic) in a GNC health store in the United States where the salesman had pointed out that the product, unlike other similar supplements, contains 6 ingredients only;
- stated that he had heard that NBA players were using this supplement and assumed it should be safe;
- informed the Panel that he made a research of "Jack3d" on the internet and thought that it was safe since it did not appear on the banned substance list provided by the NCAA;
- asserted that he consumed the drink twice times only, once before a practice and a second time before a game around 17/18 November 2011, i.e. shortly prior to the doping control. Since that time he has not used the product again;



- stated that after receiving notification of testing positive for the banned substance, he researched again the internet and found out that *dimethylamylamine HCl*, contained in Jack3D, is another name for the banned substance *methylhexanamine*;
- stated that he did not receive any anti-doping education and this was his first experience of playing professional basketball in Europe;
- asserted that he had no intention to enhance his performance and that he was not aware of the consequences of his mistake;
- expressed his regret for the adverse analytical finding and stated that it was his first anti-doping rule violation after having been tested various times during his time in college or during his time playing professional basketball;
- requested the Panel to show leniency, reconsider the PBF Decision and not impose a 2-year sanction on him for such a mistake that he committed unknowingly;

Now, therefore, the Panel takes the following:

DECISION

A period of six (6) months' ineligibility, i.e. from 8 March 2012 to 7 September 2012, is imposed on Mr. Tyrone McNeal.

Reasons:

1. 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. [...]”

2. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA ADR since 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.

3. 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.”

4. 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.”

5. The Panel notes that the Player admitted the violation and the use of the prohibited substance. He was straightforward in his submissions, in particular why he decided to buy Jack3D, under which circumstances and how often he used it. The Panel finds on the basis of the above mentioned evidence that Article 10.4 of the FIBA ADR is applicable to this case.
6. On the other hand, the Panel finds that the Player, a 24-year (at the time of the violation) professional player who -despite his limited experience in professional basketball- has participated with FIBA-clubs in Central and North America after graduating from college, was indeed negligent in failing (a) to properly research the ingredients of the supplement before using it, as he – admittedly – did after receiving notice of the violation, or on a website that provides access to official information in accordance with WADA standards, such as FIBA.com or USADA.org; (b) not requesting his team's medical personnel (since he was under contract with a club), be it a physiotherapist or a doctor, for assistance in determining whether he was allowed to consume the supplements prior to entering a basketball competition.
7. In view of the circumstances of this case, the Player’s degree of fault and the jurisprudence of this Panel in similar cases involving the same substance and the same supplement (see *ex multis* decision of 17 April 2012 in the case of Zaid Naem Alkhas, also involving the use of

Jack3D), the Panel decides that it is appropriate to impose a sanction of six (6) months on the Player.

8. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 8 March 2012, date of the PBF Decision, since there are no records of the Player's participation in any competitions ever since.
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, 21 August 2012

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert

President of the Disciplinary Panel