

In the matter of the Canadian Anti-Doping Program;

And in the matter of an anti-doping rule violation by Valerio Moscariello asserted

by

The Canadian Centre for Ethics in Sport;

And in the matter of a hearing before the Doping Tribunal.

DECISION

I have been appointed as an arbitrator in this matter in which the Canadian Centre for Ethics in Sport ("CCES") alleges an anti-doping violation by Valerio Moscariello.

On October 26, 2009, after reviewing written submissions and an affidavit of Anne Brown, the General Manager, Ethics and Anti-Doping Services for CCES, dated October 26, 2009, I made two related orders:

1. that the Doping Tribunal hearing proceed in the absence of Mr. Moscariello; and
2. that Mr. Moscariello need not be provided with any further notice of these proceedings.

CCES has now provided a further affidavit from Ms. Brown (dated November 29, 2009) together with written submissions regarding the alleged doping violation and potential sanction sought.

Central to these proceedings is a notarised statement, dated February 25, 2009, provided by Mr. Moscariello (the "Statement"), which is attached as Exhibit 1 to Ms. Brown's November affidavit. The Statement was obtained during the course of an earlier Doping Tribunal hearing involving Ms. Amanda Galle, a Boxing Canada athlete. The opening paragraph of the Statement provides:

My name is Valerio Moscariello and I am a conditioning coach, personal trainer, nutritional consultant and amateur body builder. I am writing you in my capacity as Amanda Galle's conditioning coach in regards to her positive drug test result of January 24th 2009, in regards to which I must take full responsibility. For the last 6 months I have been acting as Amanda's conditioning coach. As part of her regular regiment I injected her on a bi-weekly basis with a combination of vitamin B6 and B12. Unfortunately I made an error on one occasion that resulted in this positive test result.

On the basis of this evidence, I am satisfied that, at the relevant time, Mr. Moscariello acted as a conditioning coach for Ms. Galle, and as such, that he falls within the category of "athlete support personnel" within the meaning of the Canadian Anti-Doping

program ("CADP") and is subject to its provisions. In these proceedings he is also subject to the specific rules governing the conduct of doping disputes which are found in the Canadian Sports Dispute Resolution Code (the "Code").

In the Statement, Mr. Moscariello states that as part of Ms. Galle's conditioning regime he injected her, on a bi-weekly basis with a combination of vitamins B6 and B12 but that on January 14, 2009 he mistakenly injected her with deca-durabolin, which he had prepared for his personal use as an amateur body builder. He further states that after Ms. Galle left his residence he realized his error but did not advise her of this mistake because he thought "nationals were months away" and he did not want to "unnecessarily worry her and distract her from her training".

Shortly thereafter, Ms. Galle tested positive for the presence of Nandrolone, a prohibited substance on the 2009 WADA Prohibited List and on April 23, 2009 a Doping Tribunal ruled that she had committed an anti-doping violation. The Statement formed part of the evidential record considered by that Doping Tribunal, who imposed a sanction of two years ineligibility. The decision of the Doping Tribunal is attached as Exhibit 2 to Ms. Brown's affidavit.

The final paragraphs of the Statement also have relevance to these proceedings and I reproduce them in full:

When word of the test results came I was in England and not easily reached. When I returned on February 19th and checked my messages found several left for me by both Amanda and her boxing coach Vito Brancaccio saying that they urgently needed to talk to me. The next day I met with them in person, was told the news and asked if I had any knowledge as to if the results were accurate and if so how something like this could have happened. I was mortified. I immediately told them what had happened. They were both visibly upset and personally I could not have felt any worse. I immediately resigned as Amanda's conditioning coach and asked if there was anything I could do to explain to the appropriate authorities that this incident was entirely my fault and an innocent mistake as that.

I bare (sic) the full responsibility for this incident. Amanda had no knowledge of the deca-durabolin as it was done unintentionally nor was she aware that I was utilizing the substance myself. My lack of care and diligence is what led to the mistake. Amanda is one of the most determined and hardest working athletes I have ever met. She owes her accomplishments to her own relentless training and she should not have that tarnished by my stupid one time mistake. I ask that you please lay blame on my shoulders and leave her reputation and record untarnished.

The Alleged Violation

The burden of proof of establishing a doping violation is set out in Rule 7.81, which provides:

- 7.81 The CCES shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the CCES has established an anti-doping rule violation to the comfortable satisfaction of the Doping Tribunal bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.....

The specific violation alleged is that of "administration" of a Prohibited Substance as provided in Rule 7.37:

7.37 Administration or *Attempted* administration to any *Athlete In-Competition* of any *Prohibited Method* or *Prohibited Substance*, or administration or *Attempted* administration to any *Athlete Out-of-Competition* of any *Prohibited Method* or any *Prohibited Substance* that is prohibited *Out-of-Competition*, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation. [Code Article 2.8]

The Prohibited Substance at issue is Nandrolone, in respect of which, Ms. Brown deposes (at para 17):

17. Nandrolone is a prohibited substance according to the 2009 WADA Prohibited List. The product 'deca-durabolin' referred to in the statement provided by Mr. Moscariello is a steroid and is detected as Nandrolone (or the metabolites of Nandrolone) in human samples when it has been administered. Attached hereto and marked as Exhibit 4 to my affidavit is a copy of the 2009 WADA Prohibited List (ref. p. 2).

The Violation

The evidential record in this case clearly establishes that Mr. Moscariello administered a Prohibited Substance to Ms. Galle and thus that he committed an anti doping rule violation.

Sanction

Rule 7.40 provides that, unless the exceptional circumstances referenced in Rules 7.44-7.48 are met, the period of ineligibility for a violation of Rule 7.37 (administration or attempted administration) shall be a minimum of 4 years and a maximum of lifetime.

Rule 7.44 relates to Athletes and has no application in these proceedings. Nor do Rules 7.46 – 7.48. Rule 7.45, however, provides that the period of ineligibility may be reduced if Mr. Moscariello can establish that he bears "no significant fault or negligence."

As noted, Mr. Moscariello did not participate in this hearing and thus did not provide any evidence of exceptional circumstances which would justify a reduction of the period of ineligibility provided in Rule 7.40. In any event, the contents of the Statement belie any suggestion that Rule 7.45 would offer Mr. Moscariello relief.

Returning to the application of Rule 7.40, it provides:

7.40 For violations of Rule 7.36 (Trafficking or Attempted Trafficking) or Rule 7.37 (Administration or Attempted Administration), the period of *Ineligibility* imposed shall be a minimum of four (4) years up to lifetime *Ineligibility* unless the conditions provided in Rules 7.44-7.48 (Exceptional Circumstances) are met. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation, and, if committed by *Athlete Support Personnel* for violations other than *Specified Substances* referenced in Rule 7.4, shall result in lifetime *Ineligibility* for such *Athlete Support*

Personnel. In addition, significant violations of Rule 7.36-7.37 which also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities. [Code Article 10.3.2]

It is significant that Rule 7.40 specifically provides that anti doping rule violations involving minors "shall be considered a particularly serious violation" and that if committed by Athlete Support Personnel are to attract a mandatory sanction of lifetime ineligibility. In this case Ms. Galle was not a minor, but at the time of her Doping Tribunal hearing (some three months after the January 14 incident) was nevertheless only 19 years of age. While a lifetime period of ineligibility is not mandatory in this case, Ms. Galle's young age, militates for a sanction at the high end of the permissible range.

Other factors I have considered in relation to an appropriate sanction include Mr. Moscariello's failure to promptly advise Ms. Galle of his actions. The evidence indicates that it was more than a month later and only when directly confronted by Ms. Galle that an admission was made.

In addition, both the arbitrator in Ms. Galle's proceeding and the affidavit of Ms. Brown refer to the fact that in 2005 Mr. Moscariello pled guilty to a felony offence in the U.S. of unlawful possession of anabolic steroids. In this proceeding, however, I have no direct evidence on this issue and accordingly can assign little weight to this fact.

In the Statement Mr. Moscariello characterizes his injection of Ms. Galle with decurabolin as simply a "stupid one time mistake", resulting from a momentary lack of attention on his part. This characterization, however, ignores the overall context in which this "mistake" occurred. To that end, Mr. Moscariello candidly admits that he personally used steroids in his own training as an amateur bodybuilder; that he kept a "supply" of them at his residence where he invited Ms. Galle to attend on a bi-weekly basis; and that he prepared his own injection at the same time and in the same place as that of Ms. Galle.

While the administration of the Prohibited Substance is the violation at issue, when determining an appropriate sanction, I can not ignore the "bigger picture" comprising the factual context in which the violation occurred. In my view, the evidence establishes that Mr. Moscariello was not only responsible for the violation, itself, but was also responsible for creating an environment in which the risk of a potential violation was manifest. In short, the totality of his admitted conduct establishes not only a momentary lack of attention on the day in question, but also an ongoing, apparently blithe disregard for the well being of the young athlete in his care. Such conduct undermines the core values of the Canadian Policy Against Doping In Sport and should be denounced.

Conclusion

Other than the facts referred to, I have little information as to Mr. Moscariello's age or circumstances in order to assess the potential impact of any particular period of ineligibility. I am satisfied, however, that the facts do not support the imposition of the minimum period of ineligibility. Rather, the sanction ought to be of sufficient length not

only to denounce Mr. Moscariello's conduct but also to protect other young athletes who might otherwise be put at similar risk. On the latter issue, I am cognizant of the fact that if Ms. Galle had been only one year younger I would have no discretion and lifetime ineligibility would have been mandatory. In the end, after weighing all of the evidence, I have concluded that a twelve year period of ineligibility, commencing on today's date, is both proportionate to the gravity and harm occasioned by Mr. Moscariello's conduct and appropriate in all of the circumstances.

Unless a written request is made on or before 5:00 pm on December 17, 2009, there will be no order for costs.

Dated at Vancouver, this 14 day of December, 2009.



Barbara Cornish, Arbitrator