

DECISION of the FEI TRIBUNAL

dated 4 September 2012

Human Anti-Doping Case No.: 2011/01

Athlete / NF: Angela Covert/CAN

FEI ID: 10039617

Event: CSI4*-W, Calgary, Spruce Meadows AB (CAN); 2011_CI_1098_S_S_01_02

Sampling Date: In-competition, 30 June 2011

Prohibited Substances: Methylhexaneamine (Dimethylphenylamine)

I. COMPOSITION OF PANEL

Dr. Armand Leone, Chair
Ms. Randi Haukebø, Member
Mr. Patrick A. Boelens, Member

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by the Athlete:**
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the Athlete.
- 3. Oral hearing:** none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

- 1. Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 23rd edition, effective 6 May 2011 ("Statutes"), Arts. 1.3, 34, 36 and 37.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 143.1, 168.4 and 169 ("GRs").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012 ("IRs").

FEI Anti-Doping Rules for Human Athletes, based upon the 2009 revised Code, effective 1 January 2011 ("ADRHA").

World Anti-Doping Code 2009.

2011 Prohibited List of the World Anti-Doping Agency (« the List »).

2. The Athlete: Ms. Angela Covert

3. Justification for sanction:

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

Art. 2.1.1 ADRHA: "It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* 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 *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1."

Art. 4.1 ADRHA: "These Anti-Doping Rules incorporate the *Prohibited List* which is published and revised by *WADA* as described in Article 4.1 of the Code. The *FEI* will make the current *Prohibited List* available to each *National Federation* by means of publication on the www.fei.org website, and each *National Federation* shall ensure that the current *Prohibited List* is available to its members and constituents."

IV. DECISION

1. Factual Background

- 1.1 Ms. Angela Covert (the "Athlete") participated at the CSI4*-W, Spruce Meadows AB in Calgary, Canada from 30 June to 3 July 2011 (the "Event"), in the discipline of Jumping.
- 1.2 On 30 June 2011, the Athlete was selected for in-competition testing. Analysis of urine sample no. 1906747 taken from the Athlete at the Event was performed at the WADA-approved laboratory, Institut Armand Frappier ("INRS"), in Montreal, Canada. The analysis of the urine sample revealed the presence of Methylhexaneamine (Dimethylphenylamine). Methylhexaneamine

(Dimethylphenylamine) is a Prohibited Substance according to the 2011 Prohibited List of the World Anti-Doping Agency ("WADA"), in force at the time of sample collection (Certificate of Analysis dated 26 July 2011 and Amended Certificate of Analysis dated 3 August 2011).

- 1.3 Methylhexaneamine (Dimethylphenylamine) is listed in class S6b "Specified Stimulants" of Prohibited Substances and is considered a "Specified Substance" under the 2011 WADA Prohibited List. It is prohibited in-competition.
- 1.4 No valid Therapeutic Use Exemption ("TUE") had been granted for the substance as set forth in Article 4.4 of the ADRHA. Therefore, the positive finding for Methylhexaneamine (Dimethylphenylamine) gives rise to an anti-doping rule violation under the ADRHA.

2. The Proceedings

- 2.1 The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the Athlete by the FEI Legal Department on 23 August 2011, through Equine Canada ("CAN-NF").

3. The B-Sample Analysis

- 3.1 The Athlete was also informed in the Notification Letter of 23 August 2011 that she was entitled: (i) to the performance of the B-Sample analysis on the positive sample; and (ii) to attend or to be represented at the B-Sample analysis.
- 3.2 On 25 August 2011, the Athlete requested for the B-Sample analysis to be performed in a different laboratory than the A-Sample analysis.
- 3.3 On 26 August 2011, the FEI informed the Athlete that neither the ADRHA nor the WADA Code foresaw the possibility to conduct the B-Sample analysis in a different laboratory from the A-Sample analysis.
- 3.4 On 29 August 2011, the Athlete confirmed that she wished for the B-Sample analysis to be performed in the INRS laboratory, in accordance with FEI rules and procedures. She further informed the FEI that she did not wish to attend the B-Sample analysis.
- 3.5 The B-Sample analysis was performed on 12 September 2011 at the INRS. The B-Sample analysis confirmed the presence of Methylhexaneamine (Dimethylphenylamine) (Certificate of Analysis dated 13 September 2011). The results of the B-Sample analysis were notified to the Athlete on 20 September 2011. On 20

September 2011, the Athlete also received the Laboratory Documentation Packages (A-Sample and B-Sample) for the positive samples by the FEI Legal Department.

4. The further Proceedings

- 4.1 On 24 August 2011, the CAN-NF explained that the Athlete had broken her nose just prior to being tested and that the emergency doctor had sprayed her nose because it had not stopped bleeding. That it seemed that the substance sprayed had caused the positive test result. The FEI informed the CAN-NF, upon its request, that no retroactive TUE was available under the ADRHA, nor under the WADA Code.
- 4.2 On 25 August 2011, the Athlete requested a Hearing.
- 4.3 On 20 September 2011, the Athlete received the Laboratory Documentation Packages (A-Sample and B-Sample) for the positive samples by the FEI Legal Department.
- 4.4 On 12 October 2011, Counsel for the Athlete, Mr. Timothy Danson of Danson Recht, explained that on 19 June 2011, the Athlete had competed at Spruce Meadows in Calgary, Canada. That during the Competition, her horse had come to an abrupt stop at one of the jumps, and that she had fallen off the horse, falling face first into the jump. That she had been subsequently treated at the hospital because of a fractured nose, a septal hematoma, lacerations to the bridge of her nose and a concussion. That she had been given a nose spray, in order to stop her nose from bleeding, that she had checked all medications she had been given by her doctor, and that no medication had been identified as prohibited. That furthermore, Methyhexaneamine was not listed on the label of the nose spray. That therefore, no TUE had been necessary, and that otherwise, on the Doping Control Form she had disclosed having taken other medications. Together with her submission the Athlete provided a video of the riding accident, a photograph of her face with the broken nose, and the respective hospital record.
- 4.5 In addition, the Athlete requested an extension of the deadline to provide explanations, since she wanted investigate further into the details of the positive test result. On 17 October 2011 the FEI granted the Athlete's request for extension. On 1 December 2011, in the absence of any further explanations from the Athlete, the FEI requested an update on the matter.
- 4.6 On 2 December 2011, the Athlete submitted further explanations. Together with her submission, the Athlete provided an expert opinion by Dr. Edward M. Sellers and his biography. Dr. Sellers, in his expert opinion explained that Methyhexaneamine was not listed as a component of the nasal spray "Euvanol". That however one of

the components of Euvanor was geranium oil, and that one of the constituents of geranium oil was Methylhexaneamine, at a concentration of 3 mg/ml. That in general, a percentage of about 0.66 - 1.0 % of geranium oil was Methylhexaneamine, and that therefore each millilitre of Euvanor contained approximately 0.03mg of Methylhexaneamine. Dr. Sellers took the position that in light of the small concentration of Methylhexaneamine detected in the Athlete's sample - about 2.8 ug/ml - it was very likely that the Adverse Analytical Finding resulted from the use of the Euvanor nasal spray. Further that Methylhexaneamine could affect performance, but that the doses for such an effect would be in an order of 10 - 40 mg, and that 300ml of the nasal spray would have been required to arrive at a dose of 10mg.

4.7 In essence, the Athlete argued:

- a) That by means of the expert opinion of Dr. Sellers, she had established how the Prohibited Substance had entered her system, i.e. due to the use of the nasal spray Euvanor.
- b) That she had also established that she had no intention to enhance her sport performance or to mask the use of a performance-enhancing substance, since she had taken the nasal spray Euvanor only in order to stop her nose bleed. That Equestrian athletes would not use drugs on themselves, but rather on horses, and that it was certainly not in the interest of any Equestrian athlete to use stimulants, but if at all, Equestrian athletes would rather use a sedative or a drug that calms and relaxes. That, as explained by Dr. Sellers, the substance would not be a very good stimulant, and would only have had a performance enhancing effect at a concentration in an order of 10 - 40 mg, but not at the concentration detected in the Athlete's sample.
- c) That she had produced corroborating evidence - the report of Dr. Sellers, a video-clip of the riding accident, the medical record and a photograph - in addition to her word, which confirmed that the timing of the ingestion was directly connected to the injuries sustained from the riding accident. That further she had used the Euvanor spray in an open and obvious manner. That there had been no departure from the expected standard of behaviour, since the use of the nasal spray was what one would expect following a serious nose injury.
- d) That finally, because Methylhexaneamine was a Specified Substance, Article 10.4 of the ADRHA had to be applied and since it was the Athlete's first violation, only a reprimand and no period of Ineligibility should be imposed on her.

4.8 On 27 March 2012, the FEI submitted its Response to the Athlete's submissions. Together with its submission, the FEI provided a statement by Dr. Peter Whitehead, Member of the FEI Medical Committee. Dr. Whitehead affirmed that – as explained by Dr. Sellers - because of the low concentration of Methylhexaneamine detected in the Athlete's sample and the low concentration of Methylhexaneamine in the nasal spray Euvanor, it was plausible that the Adverse Analytical Finding had been caused by the use of the nasal spray. Dr. Whitehead further affirmed that stimulants, such as Methylhexaneamine, were used to combat natural fatigue and for weight reduction and were therefore potentially advantageous to riders. That nevertheless, the concentration of Methylhexaneamine in Euvanor was very low and that therefore its use would not likely benefit equestrian riders. Dr. Whitehead further stated that he was convinced that the Athlete inadvertently absorbed the Methylhexaneamine in the form of a nasal spray used to control her nosebleeds, underlining at the same time that it was nonetheless the Athlete's responsibility to be aware of the status of any medications used.

4.9 In essence the FEI argued:

- a) That since the Athlete had not disputed that Methylhexaneamine was present in the sample collected from her at the Event, and since no TUE had been provided for the Prohibited Substance, it had discharged its burden of establishing that the Athlete had violated Article 2.1 of the ADRHA. Further, that a period of Ineligibility of two years according to Article 10.2 of the ADRHA should be imposed, unless the conditions for eliminating, reducing or increasing that period, as set out in Articles 10.4, 10.5 and 10.6 of the ADRHA, were met.
- b) That, as explained by Dr. Sellers and affirmed by Dr. Whitehead, the evidence adduced on behalf of the Athlete was likely to prove, as required under Article 10.4 of the ADRHA, by a balance of probability, that the Methylhexaneamine in the Athlete's system resulted from the nasal spray Euvanor, used by the Athlete prior to the Event.
- c) That, as further affirmed by Dr. Whitehead and as required under Article 10.4 of the ADRHA, the Athlete had established that the Specified Substance was not intended to enhance her sport performance. The the FEI based its position on the grounds that Methylhexaneamine was not specifically listed as an ingredient of Euvanor, and that therefore it was likely that the Athlete had absorbed the Methylhexaneamine inadvertently.
- d) That as a result, the Athlete had established the prerequisites for the application of Article 10.4 of the ADRHA and that therefore the Athlete's degree of fault had to be assessed as criterion for

any reduction of the period of Ineligibility. That, since the Prohibited Substance detected in the Athlete's sample was not listed as an ingredient in the medication used by her, she bore a minor degree of fault for the rule violation. That nonetheless, as also affirmed by Dr. Whitehead, the Athlete had the obligation to carefully check any medication, and to also obtain expert advice on the risks of any medication used.

- e) That therefore, the Tribunal should impose – at its discretion – a reprimand or a reduced period of Ineligibility under Article 10.4 of the ADRHA. The FEI further invited the Tribunal to disqualify all of the Athlete's individual results obtained in the Event, with any and all horses the Athlete competed with, even more so since those results were obtained on the same day.

4.10 On 6 June 2012, the Athlete submitted her Rebuttal submission. In a nutshell she argued:

- a) That the concept of "strict liability" as set forth in Article 2.1 of the ADRHA had to be differentiated from "absolute liability" offences and that a "due diligence" defence, which would not require perfection, was available to the Athlete. That the Athlete had endured the pain suffered following her accident, to avoid precisely the circumstances she now found herself in. That further, there had been no reasonable basis for her to know that geranium oil contained Methylhexanamine, since it had not been identified on the label, and since it had been used legitimately and honestly by her on advice of her doctor, to control her nose bleeds. That further, since she was not a medical expert, she had exercised due diligence at the time. That in these very unique circumstances, she had established no fault or negligence, and should therefore not suffer the embarrassment of a reprimand.
- b) That, if the Tribunal nonetheless found that she was at fault or had acted negligently, her negligence was at the far end of "low", and therefore justified a reprimand, at the most. That lastly, since her case had nothing to do with performance enhancement, and since there was overriding evidence which confirmed that her performance was seriously detrimentally inhibited by her concussion injury, broken nose and overall pain, there was no sound or compelling reason to justify any further sanction, such as disqualifying all results obtained at the Event, with any horses she competed with. That since she had also been completely cooperative, consistent and transparent she should receive no financial sanction nor to be ordered to pay the legal costs of the FEI.

4.11 On 23 July 2012, prior to a hearing scheduled to take place on 24 July 2012, the Tribunal, following its review of the Case File,

informed the Parties that it felt sufficiently informed to make a decision without a hearing, based on the Parties' submissions. That, based on the Parties' submissions, it was not intending to order the Athlete to serve any period of Ineligibility. As a consequence,, both Parties agreed to forego a hearing.

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and the ADRHA.

6. The Decision

- 6.1 As set forth in Article 2.1.2 of the ADRHAs, sufficient proof of an anti-doping rule violation under Article 2.1 is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A-Sample where the Athlete waives his right to the analysis of the B-Sample and the B-Sample is not analysed, or the B-Sample confirms the A-Sample. The Tribunal is satisfied that the laboratory reports relating to the A-Sample and the B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the INRS are accurate. The Tribunal is satisfied that the test results evidence the presence of Methylhexaneamine in the Sample taken from the Athlete at the Event. Methylhexaneamine is listed as a Prohibited Substance on the List. No TUE had been provided for the Prohibited Substance. The Athlete did not contest the accuracy of the test results or the positive findings.
- 6.2 The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ADRHA. This is undisputed between the Parties.
- 6.3 Pursuant to Article 10.2 of the ADRHAs, the mandatory period for a first breach of the ADRHA is a period of two (2) years Ineligibility. However, depending on the circumstances of the specific case, a reduction or even elimination of this period of Ineligibility is possible under Articles 10.4 and 10.5 of the ADRHA. Article 10.4 of the ADRHA is generally applicable in the case at hand since Methylhexaneamine is classified as a "Specified Substance". In order to benefit from a reduction of the otherwise applicable period of Ineligibility under Article 10.4 of the ADRHA, the Athlete must establish how the Specified Substance entered his or her body. The Athlete also has to establish that such Specified Substance was not intended to enhance his or her sport performance, or to mask the use of a performance-enhancing substance. To justify any elimination or reduction under Article 10.4 of the ADRHA, the

Athlete must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or to mask the use of a performance-enhancing substance.

- 6.4 The Tribunal, in considering the Athlete's explanations and supporting evidence - in particular Dr. Sellers' statement - as well as Dr. Whitehead's statement - finds that the Athlete has established by "a balance of probability", as required under Article 3.1 of the ADRHA, that the nasal spray Euvanol, used by her, has caused the positive test result. The Tribunal is therefore satisfied that the Athlete has established how the Prohibited Substance entered her body.
- 6.5 In a second step, the Tribunal has to determine whether the Athlete has established that the use of the Specified Substance was not intended to enhance her sport performance. The Tribunal takes note of the evidence produced by the Athlete, showing her facial injury, particularly the expert report of Dr. Sellers, the video-clip of the riding accident, the medical record of the riding accident and the photograph of her face. The Tribunal further notes that Methylhexaneamine was not specifically listed as a component of the nasal spray Euvanol, and is therefore of the opinion that the Athlete absorbed the Methylhexaneamine inadvertently. Hence, the Tribunal is comfortably satisfied that the Athlete produced corroborating evidence - in addition to her word - establishing the absence of intent to enhance sport performance. Accordingly, the Tribunal considers that the prerequisites of Article 10.4 of the ADRHA are fulfilled.
- 6.6 The Tribunal however finds that the Athlete was negligent - even though her negligence was minimal - since she had not carefully researched the ingredients of the multi-substance medication Euvanol, for example on the internet. In this context, the Tribunal understands that Methylhexaneamine had been included in the WADA 2011 Prohibited List. The Tribunal further understands that WADA, through its "Explanatory Notes on the 2011 Prohibited List" informed all stakeholders, that the Prohibited Substance Methylhexaneamine was "often marketed as a nutritional supplement and may frequently be referred to as "geranium oil" or "geranium root extract". The Tribunal is of the opinion that athletes have a non-delegable duty to investigate that all medications and substances they are taking are not Prohibited Substances, and that their duty further includes investigating all components of a multi-substance medication. The Tribunal is further of the opinion that the Athlete was also negligent when competing with the Prohibited Substance in her body, putting herself in potential danger by competing despite the acute injuries she had.

- 6.7 The range of penalties available for first time offenders - such as the Athlete - in connection with a proven violation relating to the presence of a Specified Substance during the competition is, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility.
- 6.8 In deciding the sanctions, the Tribunal considers, on the one hand, the degree of the anti-doping rule violation, the Athlete's negligence with regard to her duty of care as a competitor, in particular taking into account the research on the ingredients of the multi-substance medication Euvanor she could have conducted, and the potential danger by competing despite her acute injuries. On the other hand, and in mitigation, the Tribunal takes into account that the Athlete has established the absence of intent to enhance sport performance to its comfortable satisfaction, the Athlete's efforts to determine if there were any Prohibited Substances in the medication prescribed and used to treat her injuries, and the low potential of geranium oil to enhance performance, especially when given in the form of a nasal spray.

7. Disqualification

- 7.1 For the reasons set forth above, the Tribunal is disqualifying the Athlete from the Competition and all medals, points and prize money won at the Competition must be forfeited, in accordance with Article 9 of the ADRHA. The Tribunal is further disqualifying all other results obtained by the Athlete in the Event, in accordance with Article 10.1 of the ADRHA. The Tribunal takes note of the Athlete's claim that her performance had been diminished by the use of the Euvanor and that therefore, disqualification of all results obtained at the Event, with any horses was unjustified. However, in light of the fact that all those results were obtained at the same day on which the positive sample has been provided, and considering the undisputed general potential of Methylhexanamine to enhance performance, the Tribunal finds that the disqualification of the other results obtained at the Event is justified.

8. Sanctions

- 8.1 As a consequence of the foregoing, the Tribunal decides to impose the following sanctions on the Athlete, in accordance with Article 169 of the GRs and Article 10 of the ADRHA:
- 1) The Athlete shall be formally **reprimanded**.
 - 2) The Athlete is fined **CHF 500**.
 - 3) Each Party shall bear its own legal costs of the legal

procedure.

- 8.2 According to Article 168.4 of the GRs, the present Decision is effective from the day of written notification to the persons and bodies concerned.
- 8.4 In accordance with Article 12 of the ADRHA, the Athlete and the FEI may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

1. **The person sanctioned:** Yes
2. **The President of the NF of the person sanctioned:** Yes
3. **The President of the Organising Committee of the Event through his NF:** Yes
4. **Any other:** WADA

FOR THE PANEL



THE CHAIRMAN, Dr. Armand Leone