

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

**AND IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY ERIC KUKUCKA
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT**

**No: SDRCC DT-06-0041
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN
SPORT ("CCES")**

FOOTBALL CANADA

GOVERNMENT OF CANADA

and

ERIC KUKUCKA ("Athlete")

and

**WORLD ANTI-DOPING AGENCY
(Observer)**

Before:

John Welbourn (Arbitrator)

Appearances:

The Athlete:

Eric Kukucka

For the Athlete:

John Kukucka
Ross Spettigue
Glen Mills

For the Canadian Centre for Ethics in Sport:

David Lech (Legal Counsel)
Karine Henrie

For the Government of Canada:

No Appearance

For Football Canada:

Bob Swan
Tamara Medwidsky

For the World Anti-Doping Agency:

No Appearance

**For the Sport Dispute Resolution Centre
of Canada:**

Benoit Girardin

Hearing:

By telephone conference held on Thursday, September 28, 2006, at 10:00 a.m. (E.D.T.)

Preliminary Matters:

1. Two preliminary meetings were held by telephone conference on September 12 and 15, 2006. During the first conference, the parties agreed to waive the requirement that the hearing commence no later than thirty days from the Rule 7.46 notification.
2. Subsequent to the second preliminary meeting, the Athlete and the CCES agreed to conduct the hearing by teleconference.

Evidence:

3. The evidence tendered by the CCES is the Affidavit of Anne Brown sworn September 18, 2006 and the fifteen Exhibits attached thereto. The Athlete did not present any evidence regarding any aspect of the matter including doping control, sample collection, chain of custody or sample analysis.

Facts:

4. On July 15, 2006, the Athlete was an athlete in the sport of junior football and a member of Football Canada ("FC"). As a member, he was required to abide by the rules of FC.
5. FC is the national sport organization governing the sport of junior football in Canada and adopted the Canadian Anti-Doping Program ("CADP") on July 10, 2004. The purpose of the CADP is to protect the rights of athletes to fair competition and against the unethical practice of doping.
6. The CCES is an independent, non-profit organization that promotes ethical conduct in all aspects of sport in Canada, and also maintains and carries out the Canadian Anti-Doping Program, including providing anti-doping services to national sport organizations and their members.
7. On July 15, 2006, the Athlete was a member of Team Ontario competing at the "Under 19" Canada Cup in Winnipeg, Manitoba. He was randomly selected for in-competition doping control that day. The Athlete attended at doping control and provided a urine sample for testing as required.

8. The sample was delivered to the World Anti-Doping Agency ("WADA") accredited laboratory in Montreal, Quebec for analysis.
9. On August 3, 2006, the CCES received the Certificate of Analysis for the Athlete's sample from the laboratory. The Certificate attests to the presence of Stanozolol metabolites in the Athlete's sample. Stanozolol is a prohibited substance named in the 2006 WADA Prohibited List.
10. The CCES commenced an "initial review" pursuant to Rule 7.45. The initial review determined that the Athlete had not been granted a Therapeutic Use Exemption ("TUE") relating to the use of Stanozolol, nor was there any apparent departure from the doping control Rules or the laboratory analysis that might undermine the validity of the adverse analytical finding.
11. As part of the initial review, the CCES, through FC, asked the Athlete to provide the CCES with a written explanation for the adverse analytical finding.
12. By letter dated August 17, 2006, the Athlete provided a letter to the CCES in which he stated that:
 - a) He had used Stanozolol and had done so without his team's or teammates' knowledge;
 - b) He took full responsibility for his actions;
 - c) He would be willing to undergo further testing, engage in community service work, and participate in a "rehabilitation program".

The Athlete did not raise any issue regarding the doping control procedures or sample analysis, and did not suggest that he had a TUE for Stanozolol.

13. On August 24, 2006, the CCES issued a Notice to the Athlete pursuant to Rule 7.46 of the CADP asserting that the Athlete had committed an Anti-Doping Rule violation according to Rules 7.16 to 7.20. This assertion was based on the Certificate of Analysis indicating the presence of Stanozolol metabolites in the Athlete's sample. The CCES proposed that the sanction for the violation be two years' ineligibility from participating in any competition or other activity, and permanent ineligibility for direct financial support from the Government of Canada.
14. During the hearing, the Athlete acknowledged that he did not dispute any of the evidence contained in the Affidavit of Anne Brown. Further, the Athlete forthrightly admitted the Anti-Doping violation.

Violation Finding:

15. The CCES has met the burden of proof that the Athlete committed an Anti-Doping Rule violation by reason of the detection of metabolites of Stanozolol, a prohibited

substance, in the urine sample collected from the Athlete on July 15, 2006 pursuant to the Doping Control Rules of the CADP. This is a first violation.

Penalty:

16. Rule 7.20 of the CADP specifies the penalty for a first violation to be two years ineligibility. The Rules provide the opportunity to eliminate or reduce the sanction for exceptional circumstances as provided in Rules 7.38, 7.39 and 7.40 of the CADP.
17. In this matter, Rule 7.38 does not have any application. The Athlete acknowledges the deliberate use of the prohibited substance for the period March through May, 2006. Similarly, Rule 7.39 does not assist the Athlete. His deliberate use of the prohibited substance precludes any suggestion that the Athlete bears no significant fault or negligence in respect of the violation.
18. The Athlete's letter of September 10, 2006 states:

Under Section 7.40 I am willing to co-operate fully with the CCES. I am able to provide information with regard to where and how I obtained Stanazolol.

Notwithstanding this suggestion by the Athlete, he has not provided any sworn evidence or other information regarding where and how he obtained Stanazolol.
19. Therefore, none of Rules 7.38 to 7.40 of the CADP assist the Athlete.
20. The oral submissions of Messrs. John Kukucka, Ross Spettigue and Glen Mills each reiterated that the Athlete:
 - a) is 17 years old;
 - b) is a good student;
 - c) has made a serious mistake;
 - d) acknowledges the mistake and assumes full responsibility for his actions;

and it would be appropriate to reduce the period of ineligibility in the circumstances. These submissions do not constitute "exceptional circumstances" as contemplated by Rules 7.38 to 7.40.
21. Unless any of Rules 7.38, 7.39 and 7.40 apply, the period of ineligibility cannot be reduced. As previously stated, there isn't any evidence that any of these Rules apply in this matter.
22. It is noted that the Athlete has been out of competition since the Canada Cup event in Winnipeg in July, 2006. The Athlete has not been provisionally suspended, voluntarily or otherwise. There isn't any evidence whether a provisional suspension was proposed to the Athlete.

23. The Athlete was first notified of the adverse finding by telephone call from FC on August 4, 2006. He was invited to provide a written explanation by not later than Friday, August 18, 2006.
24. The Athlete's written explanation, dated and received August 17, 2006, acknowledges his use of the prohibited substance. This early admission by the Athlete is to his credit. In this circumstance, it is fair that the period of ineligibility should commence on August 17, 2006.

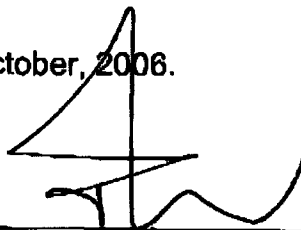
Penalty Finding:

25. The period of ineligibility is two years commencing August 17, 2006.

Costs:

26. No party made any submission regarding costs. Accordingly, each party shall bear its own costs of the hearing.

DATED at Calgary, Alberta, this 3rd day of October, 2006.



JOHN WELBOURN, C.Arb., MCI Arb.
Arbitrator