

No: SDRCC DT-06-0050
(DOPING TRIBUNAL)

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

and

**CANADIAN INTERUNIVERSITY SPORT
("CIS")**

and

GOVERNMENT OF CANADA

and

JARRET LUKIN ("Athlete")

and

**UNIVERSITY OF CALGARY ("U of C")
(Observer)**

and

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

Before:

John H. Welbourn, Arbitrator

Appearances:

The Athlete:

Jarret Lukin

For the Athlete:

Jay Lukin

For the Canadian Centre for Ethics in Sport:

David Lech (Legal Counsel)
Kevin Bean

For Canadian Interuniversity Sport:

Tom Huisman

For the Government of Canada:

No Appearance

Hearing:

By telephone conference on Wednesday, January 31, 2007, at 2:00 p.m. (EST). Jay Lukin and Don Wilson attended personally at the offices of MacKenzie Welbourn LLP, 640 - 1414 - 8 Street SW, Calgary, Alberta.

Preliminary Matters:

1. The pre-hearing conference call was originally scheduled for December 28, 2006. It was postponed when the Athlete, CCES and CIS agreed to extend the deadline for commencement of the hearing which would otherwise have been required to commence no later than January 4, 2007.
2. Pre-hearing conference calls were held on January 4 and 19, 2007. During the first conference, the parties agreed that the hearing would be conducted on Monday, January 22, 2007 following an agreed schedule for delivery of Affidavit materials and submissions.
3. During the second telephone conference on Friday, January 19, 2007, the parties agreed to modify the schedule for delivery of submissions and to conduct the hearing on Wednesday, January 31, 2007, by telephone conference, and personal appearance if deemed necessary.

Evidence:

4. The evidence tendered by the CCES is the Affidavit of Anne Brown sworn January 9, 2007 and the thirteen Exhibits attached thereto. The Athlete did not present any evidence regarding any aspect of the doping control, sample collection, chain of custody or sample analysis procedures.

Facts:

5. On November 3, 2006, the Athlete was a student-athlete at the U of C and a member of the U of C men's ice hockey team.
6. The U of C is a member of CIS. CIS adopted the Canadian Anti-Doping Program ("CADP") on June 12, 2004.

against the unethical practice of doping.

9. 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 CADP, including providing anti-doping services to CIS and its members.
10. On November 3, 2006, the Athlete competed in a hockey game in Calgary, Alberta, between the U of C and the University of Regina and was randomly selected for no advance notice in-competition doping control. He attended at doping control and provided a urine sample for testing as required.
11. The sample was delivered to the WADA accredited laboratory in Montreal, Quebec for analysis.
12. On November 22, 2006, the CCES received the Certificate of Analysis for the Athlete's sample from the laboratory. The Certificate attested to the presence of cocaine metabolite in the Athlete's sample. Cocaine is a prohibited substance according to the 2006 WADA Prohibited List.
13. The CCES commenced an "initial review" pursuant to Rule 7.45 of the Doping Violations and Consequences Rules of the CADP. The initial review determined that the Athlete had not been granted a Therapeutic Use Exemption ("TUE") relating to the use of cocaine. Further, there was no apparent departure from the doping control rules or the laboratory analysis procedures that might undermine the validity of the adverse analytical finding.
14. As part of the initial review, the CCES, through CIS, asked the Athlete to provide the CCES with a written explanation for the adverse analytical finding.
15. On December 4, 2006, the Athlete provided written confirmation of his use of cocaine. He also wrote that he had not used the prohibited substance to enhance his performance in sport. The Athlete did not raise any issue regarding doping control procedures or sample analysis, and did not suggest that he had a TUE for cocaine.
16. On December 12, 2006, the CCES issued a Notice 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 cocaine metabolite in the Athlete's sample. The CCES proposed that the sanction for the violation be two years' ineligibility and permanent ineligibility for direct financial support from the Government of Canada.

Violation Finding:

18. The CCES has met the burden of proof that the Athlete committed an anti-doping rule violation by reason of the detection of cocaine metabolite, a prohibited substance, in the urine sample collected from the Athlete on November 3, 2006, pursuant to the Doping Control Rules of the CADP. This is a first violation.

Penalty:

19. 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.
20. In this matter, Rule 7.38 does not have any application. The Athlete admits his use of the prohibited substance. 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. The Athlete has not provided any sworn evidence or other information regarding where and how he obtained cocaine. Accordingly, Rule 7.40 does not assist the Athlete.
21. The written and oral submissions of the Athlete, and the oral submissions of his father, Jay Lukin, each reiterate that the Athlete acknowledges having made a serious mistake and takes responsibility for his actions. Both submit that the Athlete did not use cocaine for enhancing his performance in sport. His use of the prohibited substance was in a social setting. The Athlete clearly loves hockey and participating in the sport. Jay Lukin confirmed that his son is a good person and is not a cheater.
22. CCES did not dispute and accepted as fact the submissions of the Athlete and Jay Lukin.
23. Both the Athlete and Jay Lukin submitted that sanctions for anti-doping violations involving marijuana were considerably less severe than those for the use of cocaine. Both submitted the disparity in sanctions was inequitable.
24. These submissions do not support "exceptional circumstances" as contemplated by Rules 7.38 to 7.40.
25. 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.

been provisionally suspended since November 28, 2006. In this circumstance, it is fair that the period of ineligibility should commence on November 28, 2006.

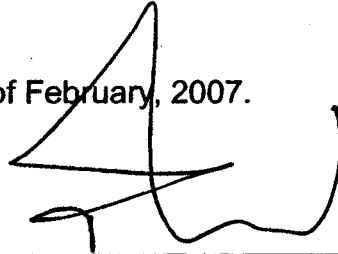
Penalty Finding:

28. The period of ineligibility is two years commencing November 28, 2006. The Athlete is permanently ineligible to receive any direct financial support provided by the Government of Canada.

Costs:

29. Neither party made any submission regarding costs. Accordingly, each party shall bear its own costs of the hearing.

DATED at Calgary, Alberta, this 5th day of February, 2007.

A handwritten signature in black ink, appearing to be 'J. Welbourn', written over a horizontal line.

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