

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 RASHAD NAJEEB
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No.: SDRCC DT 06-0049
(Doping Tribunal)

CANADIAN CENTRE FOR ETHICS IN SPORT
(CCES)

FOOTBALL CANADA

GOVERNMENT OF CANADA

And

RASHAD NAJEEB
ATHLETE

And

WORLD ANTI-DOPING AGENCY (WADA)
OBSERVER

BEFORE:

Jane H. Devlin

Arbitrator

APPEARANCES:

For the Athlete

No Appearance Following Pre-Hearing
Conference Call

For the CCES

David Lech
Karine Henrie

For Football Canada

Tamara Medwidsky
Rick Sowieta

For the Government of Canada

Johanne Imbeau
Mary Warren

1. Rashad Najeeb is a Football Canada athlete with the South Surrey Big Kahuna Rams. He is subject to the Canadian Anti-Doping Program (“CADP”), which was adopted by Football Canada on July 10, 2004.
2. On October 20, 2006, Mr. Najeeb was selected for out-of-competition doping control. Documentation filed by the CCES indicates that Mr. Najeeb signed the Athlete Selection Order Form acknowledging that he received and read the notice regarding his selection for doping control.
3. The documentation also indicates that Mr. Najeeb provided, divided and sealed his urine sample into “A” and “B” bottles. In the section of the Doping Control Form for the athlete’s remarks, Mr. Najeeb recorded “No Comment”.
4. Mr. Najeeb’s urine sample was transported to the WADA-accredited INRS Laboratory in Montreal, where it was analyzed and on November 22, 2006, the CCES received the Certificate of Analysis from the Laboratory, which indicated an adverse analytical finding for the presence of Testosterone precursor.
5. Testosterone is a prohibited substance on the 2006 WADA prohibited list, which applies to the CADP.
6. In view of the adverse analytical finding, the CCES began an initial review pursuant to Rule 7.45 of the CADP. In the course of that review, the CCES determined that

there had been no apparent departure from Doping Control Rules or the laboratory analysis which would undermine the validity of the adverse analytical finding. The CCES also determined that no Therapeutic Use Exemption (“TUE”) had been granted to Mr. Najeeb relating to the use of Testosterone.

7. In the course of its review, the CCES offered Mr. Najeeb an opportunity to provide a written explanation for the adverse analytical finding.
8. In a letter to the CCES dated November 29, 2006, Mr. Najeeb explained that he had been fasting and that some four days before providing his urine sample, he returned home after work and practice and was extremely tired and out of breath. He also explained that he ate quickly and then experienced difficulty breathing, as a result of which he used his sister’s asthma inhaler approximately three times. He stated that he notified the “testers” of his use of the inhaler and his use of Echinacea for a sore throat and sinus problems.
9. Following receipt of Mr. Najeeb’s letter, the CCES requested that the WADA-accredited Laboratory in Montreal review his explanation for the adverse analytical finding.
10. Dr. Christiane Ayotte, the Director of the Laboratory, advised the CCES that in her opinion, fasting, the use of the inhaler or Echinacea based products could not have caused the adverse analytical finding.

11. The CCES then informed Mr. Najeeb that it did not accept his explanation and offered him a further opportunity to explain the presence of Testosterone in his sample.
12. In a letter to the CCES dated December 5, 2006, Mr. Najeeb admitted that he took Testosterone “booster pills” in the hope of being able to play in an upcoming playoff game against the Okanagan Sun. He expressed regret for his actions, stressed the importance of football in his life and asked for leniency in the imposition of any penalty.
13. On December 12, 2006, the CCES issued a notice pursuant to Rule 7.46 of the CADP asserting that Mr. Najeeb had committed an anti-doping rule violation under Rules 7.16 to 7.20 (Presence in Sample). The CCES proposed a sanction of two years’ ineligibility from sport and permanent ineligibility for direct financial support from the Government of Canada.

Record of Proceedings

14. On December 13, 2006, the Sport Dispute Resolution Centre of Canada (“SDRCC”) issued an information package in which it advised Mr. Najeeb that he had until December 20, 2006 to indicate his intention to proceed with a hearing by filing a

Request or to waive his right to a hearing by filing a Waiver of Hearing. Mr. Najeeb did not reply by the prescribed deadline.

15. On December 21, 2006, the SDRCC convened an administrative conference call with the parties in which Mr. Najeeb did not participate.
16. I was appointed as Arbitrator in late December, 2006 and on January 4, 2007, I convened a pre-hearing conference call in which Mr. Najeeb participated and indicated his intention to file a Request and to challenge the assertion of an anti-doping rule violation by the CCES. Although Mr. Najeeb also advised that he would file his Request the following day, he did not do so.
17. On January 12, 2007, the SDRCC issued a letter of warning to Mr. Najeeb in which it advised that it had still not received either a Request or a Waiver. The SDRCC informed Mr. Najeeb that if he did submit a Request or a Waiver by January 17, 2007, the Arbitrator would decide whether to proceed in his absence. The SDRCC also outlined the consequences of Mr. Najeeb's failure to participate in the proceedings and, given the seriousness of the sanction proposed by the CCES, advised that it would be in his best interests to respond to the letter. The SDRCC indicated, as well, that its Resource Centre could assist him to better understand the rules of the SDRCC and that it had a list of representatives available to provide legal advice or guidance.

18. Mr. Najeeb did not file a Request or a Waiver of Hearing by January 17, 2007.
19. On January 23, 2007, I convened a further conference call with the parties in which Mr. Najeeb did not participate. During that call, I concluded that Mr. Najeeb had been given a number of opportunities to file a Request or a Waiver and had been clearly advised of the consequences of failing to participate in the proceedings. In the circumstances, I decided that this was an appropriate case in which to proceed in the absence of the athlete and a schedule was established for the delivery of affidavit material and written submissions.

Decision

20. The documentation filed by the CCES indicates that the Certificate of Analysis issued by the WADA-accredited Laboratory in Montreal relating to Mr. Najeeb's urine sample indicated an adverse analytical finding for a prohibited substance in the form of Testosterone.
21. Rule 7.17 of the CADP provides that athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their bodily samples.
22. In this case, although Mr. Najeeb initially advised the CCES that he had used an asthma inhaler for shortness of breath and Echinacea for a sore throat and sinus

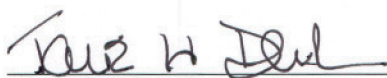
problems, in a letter to the CCES in early December, 2006, he admitted that he had taken Testosterone booster pills in the hope that he would be able to play in a game against the Okanagan Sun.

23. In his letter, Mr. Najeeb did not suggest any departure from the Doping Control or Laboratory Rules and the documentation filed by the CCES establishes the integrity of the sample collection and chain of custody procedures. There was also no indication of any flaw in the process followed by the Laboratory.
24. Based on the documentation submitted in this case, I find that the CCES has met the burden of establishing that an anti-doping rule violation occurred.
25. As Testosterone is a prohibited substance, as provided in the CADP, the penalty for a first anti-doping rule violation is a period of two years' ineligibility from sport unless the athlete establishes a basis for eliminating or reducing the penalty based on exceptional circumstances. In order to do so, the athlete must establish that there was either no fault or negligence or no significant fault or negligence on his part in relation to the violation.
26. As noted previously, in his letter to the CCES in early December, 2006, Mr. Najeeb admitted using Testosterone booster pills and he evidently did so with the intention of enhancing his performance. While he expressed regret for his actions, given his

intentional use of Testosterone, there can be no question of eliminating or reducing the penalty based on exceptional circumstances.

27. In the result, in accordance with the CADP, the penalty I am required to impose for a first anti-doping rule violation is a two year period of ineligibility from sport and permanent ineligibility for direct financial support from the Government of Canada. The period of ineligibility shall run from the date of this decision.
28. Unless a written request is made to the SDRCC within one week of the date of the decision, there will be no order as to costs.

DATED AT TORONTO, this 13th day of February, 2007.



Jane H. Devlin
Arbitrator