

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 MARSHALL
YOUNG ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No: SDRCC DT-08-0084
(DOPING TRIBUNAL)

**CANADIAN CENTRE FOR ETHICS IN
SPORT (“CCES”)**

WATER POLO CANADA (“WPC”)

GOVERNMENT OF CANADA (“GC”)

and

MARSHALL YOUNG (“Athlete”)

and

**WORLD ANTI-DOPING AGENCY
 (“WADA”)
(Observer)**

Before:

Arbitrator: John Welbourn

Appearances and Attendances:

The Athlete: Marshall Young (unrepresented)

Canadian Centre for Ethics in Sport: David W. Lech (Counsel)
Richard Lauzon

Government of Canada: No Appearance

Water Polo Canada: Ahmed El-Awadi

World Anti-Doping Agency: No Appearance

REASONS FOR DECISION

These reasons follow my Decision of December 4, 2008 and are delivered as required by Rule 7.60(c) of the Canadian Anti-Doping Program.

Hearing:

By telephone conference on Monday, December 1, 2008, at 4:00 p.m. (EST).

Preliminary Matters:

1. Pre-hearing conference calls were held on September 22 and November 17, 2008. During the first, the Parties agreed on a schedule for delivery of Affidavit materials and written submissions.
2. CCES filed the Affidavit of Anne Brown on October 7, 2008.
3. The Athlete subsequently retained legal counsel who requested an extension of the Athlete's deadline to deliver Affidavit materials. CCES agreed to the requested extension.
4. The Athlete did not file an Affidavit as scheduled. CCES filed its written submissions on November 7, 2008.
5. At the Arbitrator's direction a second pre-hearing conference call was convened on November 17, 2008. At that time, the Athlete confirmed that his original legal counsel was no longer retained and he had consulted new counsel. The Athlete agreed to a revised schedule for delivery of his Affidavit materials and written submissions. The Parties agreed that the oral hearing would be conducted by telephone conference on December 1, 2008.
6. The Athlete did not file any Affidavit materials or written submissions.

Evidence:

7. The evidence tendered by CCES is the Affidavit of Anne Brown sworn October 7, 2008 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:

8. On June 15, 2008, the Athlete competed in the Canadian Club Water Polo Championships in Quebec City, Quebec. The championships were a WPC event.
9. WPC adopted the Canadian Anti-Doping Program ("CADP") on June 1, 2004. As a member of a team participating in a WPC event, the Athlete was subject to the Rules of the CADP.
10. The purpose of the CADP is to protect the rights of athletes to fair competition and against the unethical practice of doping.

11. 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 WPC and its members.
12. On June 15, 2008, the Athlete was selected for no advance notice, in-competition doping control. He attended at doping control and provided a urine sample for testing as required.
13. The sample was delivered for analysis to the WADA accredited laboratory in Montreal, Quebec.
14. On July 10, 2008, CCES received the Certificate of Analysis for the Athlete's sample from the laboratory. The Certificate attested to the presence of cannabis in the Athlete's sample, measured at 284 ng/mL (+/- 23 ng/mL) (the "Adverse Analytical Finding"). The presence of cannabinoids, above the threshold of 15 ng/mL, is a prohibited substance according to the 2008 WADA List of Prohibited Substances.
15. 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 relating to the use of cannabis. Further, there was no apparent departure from the doping control Rules of the laboratory analysis procedures that might undermine the validity of the Adverse Analytical Finding.
16. As part of the initial review, CCES, through WPC, asked the Athlete to provide CCES with an explanation for the Adverse Analytical Finding.
17. On July 17, 2008, the Athlete sent an email to Kevin Bean, the Results Manager for Ethics and Anti-Doping Services for CCES. The email states in part:

I (the Athlete) do cannabis for recreation and recreational purposes only. I have been playing in the Canadian National Waterpolo League for 10 years now and it has never been brought to my attention that there will be drug testing for cannabis. It is not a performance enhancing drug nor do I use it as one. I merely use it in my pass time for enjoyment and recreation.
18. On July 28, 2008, CCES issued a Notice to the Athlete pursuant to Rule 7.46 of the CADP asserting that the Athlete had committed a second 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 cannabinoids in the Athlete's sample above the threshold of 15 ng/mL. The CCES proposed that the sanction for the second violation be 2 years ineligibility and permanent ineligibility for direct financial support from the GC.

19. The Athlete's first anti-doping rule violation occurred in June, 2005 and was also for his use of cannabis. The sanction imposed for the first violation was a warning and reprimand.
20. During the hearing the Athlete forthrightly admitted the second anti-doping rule violation.

Violation Finding:

21. CCES has met the burden of proof that the Athlete committed a second anti-doping rule violation by reason of the detection of cannabinoids above the threshold of 15 ng/mL, a prohibited substance, in the urine sample collected from the Athlete on June 15, 2008, pursuant to the doping control Rules of the CADP.
22. CCES accepts and acknowledges that the Athlete's use of cannabis was not intended to enhance his performance.

Penalty:

23. Rules 7.7 and 7.37 of the CADP specify the penalty for a second violation to be 2 years ineligibility and permanent ineligibility for direct financial support provided by the GC. The Rules provide the Athlete the opportunity to seek elimination or reduction of the sanction for exceptional circumstances as provided in Rules 7.38 to 7.40 of the CADP.
24. In this matter, Rule 7.38 does not have any application. The Athlete admits his use of the prohibited substance. In his oral submission, the Athlete stated that he had been a member of both the junior and senior men's Canadian Water Polo teams for a number of years. He had competed in the Canadian Club Championships on several occasions. He stated that he was not aware that championship participants who were not members of the national team were subject to doping control. The Athlete's belief that he was not subject to doping control because he was not a member of the national team is not sufficient to establish that the Athlete bears no fault or negligence for the violation.
25. Rule 7.39 also does not assist the Athlete. The Rule permits a reduction of the period of ineligibility if the Athlete bears no significant fault or negligence for the violation. The Athlete has not provided any sworn evidence. He has provided the written statement referred to in paragraph 17 above. This statement is demonstrably inaccurate in view of his first anti-doping rule violation in 2005. His oral statement during the hearing qualifies his written statement but there is no corroborating evidence to support the Athlete's stated belief that he was not subject to doping control because he was not a national team member. The Athlete has not established that he bears no significant fault or negligence for this second violation.
26. There is no suggestion that Rule 7.40 has any application in this matter.

27. There is not sufficient evidence to establish that Rules 7.38 to 7.40 have any application. Accordingly, the sanction cannot be reduced.
28. The Athlete is to be commended for having been forthright and forthcoming throughout.
29. The Athlete was not provisionally suspended by WPC.

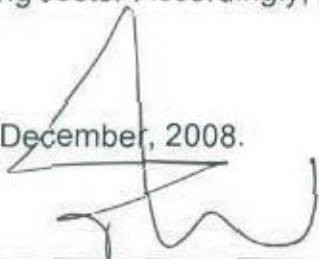
Penalty Finding:

30. The period of ineligibility is 2 years commencing December 4, 2008. The Athlete is permanently ineligible to receive any direct financial support provided by the GC.

Costs:

31. No Party made any submission regarding costs. Accordingly, each Party shall bear its own costs of the proceeding.

DATED at Calgary, Alberta, this 11 day of December, 2008.



JOHN WELBOURN, Arbitrator