

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)
ANTI DOPING DISCIPLINARY HEARING**

ATHLETE: MR RUWAN KLEINSMIT

SPORTS FEDERATION: SOUTH AFRICAN POWERLIFTING FEDERATION

DATE: THURSDAY, 10 TH NOVEMBER 2011

PLACE OF HEARING: GARDEN COURT SOUTHERN SUN HOTEL, HULLEY ROAD,
ISANDO, KEMPTON PARK.

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL
REPRESENTATIVE)
DR. GEORGE R. VAN DUGTEREN (MEDICAL
REPRESENTATIVE)
PROF. YOGA COOPOO (SPORTS ADMINISTRATOR)

PROSECUTOR: ADV NIC KOCK

SCRIBE : MS SURPRIZE MBATHA

OBSERVER : DR ZAID ESHAK

**ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN
TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES**

APPLICABLE LAW

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended), SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation. The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

The Hearing commenced at 5:30pm.

The Panel recorded its disappointment at the fact that no representative of the South African Powerlifting Federation was in attendance at the hearing, despite a formal invitation to attend being forwarded by SAIDS to the Federation. It became abundantly clear, as the hearing proceeded, that the conduct of the South African Powerlifting Federation should be reported to SASCOG and the Minister of Sport. The reasons for such drastic action will be articulated below.

PROCEDURAL MATTERS

The Athlete was in attendance at the proceedings. The Athlete confirmed that he had elected to represent himself at the hearing. He further indicated that he did not intend to call any witnesses nor did he intend to use any documents at the hearing.

THE EVIDENCE

The Prosecutor presented a bundle of documents marked "A" to "J" as documentary and corroborative evidence to the oral evidence presented. The Athlete did not dispute the veracity of any of the documents presented. In fact the athlete confirmed that he agrees with the contents of all documents presented. The charge against the Athlete was set out in written correspondence sent to the Athlete on the 25 October 2011 ("J1" and "J2"). The charge against the Athlete read as follows:

You have been charged with an anti-doping violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). On 25 June 2011, you provided a urine sample (A2531619); during an in-competition test. Upon analysis the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your urine sample. The substance identified was 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid, a metabolite of

Cannabis. Cannabis is categorized under Class S8. "Cannabinoids" on the World Anti-Doping Code 2011 Prohibited List International Standard.

The Athlete is an adult male, who returned the above positive test at the South African Powerlifting Championships in June 2011. The Prosecutor tendered evidence about the testing process that was undertaken. He presented the Doping Control Form ("C") as well as the Laboratory A-Sample Analysis Report ("B") which indicated the presence of the identified substance. He also tendered the chain of custody form of the doping control session as evidence ("D").

The Prosecutor specifically highlighted that, on the Doping Control Form, the Athlete had declared that he had taken four supplements either the day before or on the day of the test.

THE ATHLETES EVIDENCE

The athlete indicated that he was guilty of the charge. He had smoked Dagga (Cannabis) approximately three weeks before he participated in the event. He anticipated that the substance would have been cleared from his system by the time he competed. Subsequent to being charged he has done research and he has established that cannabis takes approximately 28 to 31 days to clear from the users system.

He conceded it is illegal to possess and consume cannabis in the Republic of South Africa and that he knew that he would be in violation of the relevant code if it was found in his urine sample.

He further indicated that although he won his event he had not used cannabis to enhance his performance. He agreed that it was a silly thing for him to have done as he now lost the gold medal and the title he had won. This was the first time he won such event in the adult male category. He further indicated that he had planned to compete in national tournaments in December 2011 and January 2012 and he recognized that he may not be able to participate in these events.

He stated that his federation had disseminated no information and neither were

they conducting any education in regard to use of drugs and prohibited substances by athletes. It is clear that the detection of cannabis in his urine sample had been a wakeup call for him as he has educated himself about the use of drugs. The panelists and the prosecutor further educated him about the danger of using other supplements including those listed on his Doping Control Form ("C").

The Prosecutor indicated that in the last year alone he had prosecuted six other matters of a similar nature involving athletes from the South African Powerlifting Federation. The federation was also not present at these hearing despite being invited to attend. The Panel were perturbed by the ostrich like approach adopted by the Federation. If the Federation was present at the hearing they would have been able to make an input, especially in regard to the education programmes they should be involved in. Their failure to attend was an opportunity lost to set the record straight as to the efforts they were making in this regard. The panel has to accept that they are not doing enough (if anything at all) to educate athletes participating under the auspices of that Federation.

It is the panel's view that their conduct should be reported to the Minister of Sport and Recreation as well as SASCOC for investigation.

The Prosecutor argued that the evidence proved that the Athlete was guilty. Further he argued that the evidence presented justified a sanction of a period of 3 months ineligibility, and taking into consideration all factors such ineligibility to commence upon notification being sent to the athlete of the adverse test results, being 5th August 2011.

The Prosecutor acknowledged the co-operation of the Athlete and his open and honest approach at the hearing and as he acknowledged that Article 10.4 of the Code was applicable.

FINDING ON THE CHARGE

The presence of prohibited substance identified as *11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid*, a metabolite of Cannabis in the sample (sample number A2531619)

of the Athlete was uncontested. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 21.1 of the Rules reads as follows:

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.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established. The athlete went further and gave an honest account of how the substance entered his body which was in the form of an acceptance of guilt and an explanation of his actions which resulted in the adverse finding in regard to his urine sample.

Despite the strict standard, the Panel is however able to eliminate, or reduce the period of ineligibility and may award, at a minimum, a reprimand and, at a maximum, a period of two (2) years ineligibility. The question of whether it is appropriate to decide on a period "no ineligibility" or "some ineligibility" depends on the degree of fault the Panel considers to exist on the part of the Athlete.

Article 10.4 is the relevant provision and reads as follows:

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where an *Athlete* or other *Person* can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the *Athlete's* sport performance or mask the use of a performance-enhancing substance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following;

First violation: At a minimum, a reprimand and no period of Ineligibility from future *Events*, and at a maximum, two (2) years' *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period of *Ineligibility*.

The issue before the Panel is therefore whether circumstances exist such that it is able to consider any elimination, or reduction, of the period of ineligibility as provided for under Article 10.4. This entails a consideration of the degree of fault of the individual athlete and the appropriate sanction for the athlete viewed in the light of that degree of fault. In this regard there are a number of factors to consider:

1. The Athlete has established how the Specified Substances entered his body;
 2. The Athlete disclosed to the hearing his mistake in an open and frank manner;
 3. The concentration of the cannabis was 23ng/ml which was a little higher than the WADA DL of 18ng/ml;
 4. The substance was used many weeks prior to participation for recreational
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purposes and not to enhance his performance.

5. This is the first positive test of the Athlete.

The above factors are mitigating factors relevant to the degree of fault. There are various issues in this matter however, that indicate a serious degree of fault on the part of the Athlete:

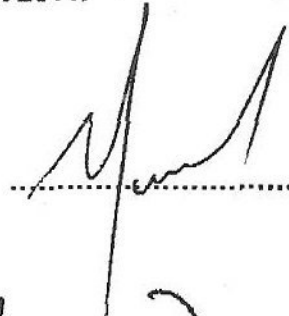
6. The Athlete is an adult sportsperson, an intelligent university student, participating at the highest level in his sport. He must have been fully aware of the consequence of his actions.
7. The substance is prohibited for possession and use in terms of the laws of our country.

In reviewing the above, the sanction on the finding of Guilty is as follows:

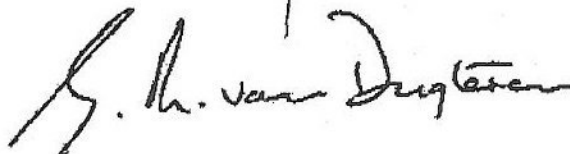
The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.4 , for a period of four (4) months which period will be effective as of 5 August 2011 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on 4 December 2011.

DATED AT JOHANNESBURG THIS 10th NOVEMBER 2011.

SIVEN SAMUEL (Chair)



DR. GEORGE R. VAN DUGTEREN



PROF. YOGA COOPOO

