

**THE IRISH SPORTS ANTI-DOPING
DISCIPLINARY PANEL**

**IN THE MATTER OF THE IRISH AMATEUR
WEIGHTLIFTING ASSOCIATION
AND Athlete IS-1530**

**RULING OF THE IRISH SPORTS
ANTI-DOPING DISCIPLINARY PANEL**

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1. Background to the case

Mr. IS-1530 is [...] of age and took up weightlifting about 10 or 11 months before the incident which gives rise to these proceedings. He had previously played [...] and [...] but following an injury, joined a weightlifting club called [...] in [...] . His coach was Mr. [...] of the Irish Amateur Weightlifting Association ("Weightlifting Ireland" or "the Association").

On [...] 2012 a competition under the auspices of Weightlifting Ireland known as the [...] was held. [...] . Mr. IS-1530 is from [...] and happened to be in [...] on that particular weekend. As a result, he took what he described in evidence as an off-the-cuff decision to enter the competition. He had never entered a weightlifting competition before and he only joined Weightlifting Ireland on the day of the competition for the purpose of entering the competition.

The competition involved competitors at various levels from beginners to more advanced competitors. All competitors were amateur. Mr. IS-1530's result in the competition was roughly in the middle of the class in which he entered.

Following his participation in the competition, Mr. IS-1530 was selected at random as one of 4 people to be tested for the presence of any prohibited substances in their bodies. A urine sample was taken from him in the presence of 2 chaperones at the doping control station. Mr. IS-1530 disclosed 2 medications or supplements he was taking on the doping control form neither of which were a prohibited substance.

The samples were dispatched to the testing laboratory in Germany¹ on the 22nd October 2012. No issues arose with regard to the sampling procedures. The analytical report from the laboratory in relation to the A sample found *"the presence of carboxy-THC at a concentration of 130ng/ml, which is greater than the decision limit (DL) of 18ng/ml. The combined standard uncertainty estimated by the Laboratory at the Threshold 15ng/ml is 0.9ng/ml. This constitutes an Adverse*

¹ Deutsche Sporthochschule Köln Institut Für Biochemie.

Analytical Finding (AAF).” The report pointed out that “*detection of carboxy-THC is consistent with the administration of the prohibited substance tetrahydrocannabinol (THC)*” commonly known as cannabis.

The Irish Sports Council carried out a review of the AAF on the 15th November 2012 as required under Article 7.2 of the Irish Anti-Doping Rules (2009 version) (“the Rules”) and certified that the review conducted by it did not reveal a valid and applicable therapeutic use exemption or departure from the International Standard for Testing or the International Standard for Laboratories in force at the time of Testing or analysis that caused the AAF. On the 23rd November 2012, the Irish Sports Council wrote to Mr. IS-1530 notifying him of the alleged violation of the Rules and advising him as to the relevant procedure including his entitlement to request that the B sample be analysed. On the same date, the Irish Sports Council notified Weightlifting Ireland and the Irish Sport Anti-Doping Disciplinary Panel of the alleged violation.

Mr. IS-1530 did not request that the B sample be analysed. By email of the 26th November 2012 to the Secretary of the Disciplinary Panel he stated:

“I am writing to you to acknowledge that I have received the documentation relating to my alleged violation of the Irish Anti-Doping Rules. I have read the documentation and wish to inform you that I will not contest its findings and I do not wish to have my “B” sample tested. I admit to the findings of the report. Thank you for your time.”

2. The hearings on the 10th January 2013 and 23rd January 2013

A Disciplinary Panel consisting of Michael M. Collins SC (Chairperson), Ms. Sarah Keane (Chief Executive Officer of Swim Ireland) and Mr. Martin Walsh (medical consultant) was convened and a hearing organised for the purpose of adjudicating as to whether Mr. IS-1530 had committed a violation of the Rules and if so what consequences should be imposed. Prior to this, the Secretary to the Disciplinary Panel, Ms. Nicola Carroll BL had been in contact with Mr. IS-1530. She sent him a variety of documentation by email and hard copy on the 30th November 2012 and Mr. IS-1530 replied by email acknowledging receipt but stating that he would not be

attending any disciplinary hearing. Ms. Carroll spoke to Mr. IS-1530 by telephone on the 3rd December 2012 and urged on him the importance of attending. She explained to him the meaning of the relevant rules. Ms. Carroll spoke again with Mr. IS-1530 by telephone on the 8th January 2013 reminding him of the hearing scheduled to take place on the 10th January but Mr. IS-1530 indicated that he still did not intend to appear.

The day before the hearing, the Panel became concerned that Mr. IS-1530 may not have fully appreciated the seriousness of the situation facing him if he did not turn up and Ms. Carroll drew his attention by email to the specific rules dealing with the imposition of a period of ineligibility and the necessity for him to give evidence if he wished to attempt to minimise the suspension.

Approximately half an hour before the hearing was due to begin on the 10th January 2013, Ms. Carroll received an email from Mr. IS-1530's coach, Mr. [...], stating that he had advised Mr. IS-1530 that it was in his best interest to attend the hearing. Mr. [...] continued:

“He is very embarrassed and apologetic about the trouble that has been caused. Due to this he feels he is unable to attend the hearing today but it is not his intention to be disrespectful. He will take any sanction handed down to him. He was made fully aware of the Anti-Doping Code when he became a member of [...]. He has competed in other sports including [...] and was in the mind frame that testing was just “for the top guys.” He has advised me that he did not realise that he would be tested for recreational drugs. In no way has he intended this to gain any advantage in weightlifting.”

The Panel, through Ms. Carroll, inquired from Mr. IS-1530 by telephone whether he wished to apply for an adjournment of the hearing to enable him to appear on another date and he indicated that he did wish to apply for an adjournment. The Association consenting to this adjournment, the hearing was re-fixed for the 23rd January 2013.

As required under Rule 8.4.1 of the Rules, Mr. IS-1530's National Governing Body (i.e. the Association) presented the case against Mr. IS-1530. The Association was represented by its President, Mr. Harry Leech, Mr. Patsy Conboy, Drug Testing Officer for the Association and Mr. Edward Flood, Assistant Anti-Doping Officer of

the Association. Ms. Siobhán Leonard from the Irish Sports Council attended the hearing as an observer pursuant to Rule 8.3.7 and Ms. Nicola Carroll BL, Secretary to the Disciplinary Panel also attended. Mr. IS-1530 represented himself and was accompanied by his coach, Mr. [...]. Both Mr. IS-1530 and Mr. [...] gave evidence.

His evidence, which the Panel accepts, was to the effect that he had been involved in sport at a social level his entire life and saw it primarily as a way to stay fit and healthy. He had never had any disciplinary issue of any kind in any of the sports he played such as [...]. On [...] 2012 (2 days before the competition) Mr. IS-1530 was out socialising and had a few drinks. He went to a house party where cannabis was being smoked and he smoked some there. It did not enter his head that what he was doing by way of socialising would enhance his performance in any way in sport. He did not smoke the cannabis with any intention of enhancing his performance in the competition. It is not in dispute that cannabis is not a performance-enhancing drug in the context of weightlifting. As noted above, Mr. IS-1530 only decided to enter the competition as an off-the-cuff decision and only joined the Association on the day of the competition which was his first.

The Association accepts that Mr. IS-1530 did not smoke the cannabis with any intention of enhancing his sports performance. No issue of using the cannabis to mask the use of any performance-enhancing substance arises and there is no allegation or evidence to that effect.

3. **Decision**

The fact of a violation under Article 2.1 of the Rules is not in dispute in this case. Accordingly, the issue is as to the appropriate sanction to be imposed. Article 10.1 of the Rules provides:

“The period of Ineligibility imposed for a first violation of Article 2.1, Article 2.2 or Article 2.6 shall be 2 years Ineligibility, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.3 and 10.4, or the conditions for increasing the period of Ineligibility, as provided in Article 10.5, are met.”

There is no dispute but that this is Mr. IS-1530's first violation. Mr. IS-1530 relies upon Article 10.3 as applicable in the circumstances of the present case to warrant either reducing or eliminating the period of ineligibility.

Article 10.3 provides as follows:

“Where a Participant 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 sports performance or mask the Use of a performance enhancing substance, the period of Ineligibility found in Article 10.1 shall be replaced with, at the minimum, a reprimand and no period of Ineligibility, and at a maximum, a period of ineligibility of 2 years.

10.3.2. To justify any elimination or reduction, the Participant must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Participant’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

It is to Mr. IS-1530's credit that following notification to him of the alleged violation on the 23rd November 2012 he immediately accepted the findings in his email of the 26th November 2012 to the Disciplinary Panel. It is unfortunate that Mr. IS-1530 did not appear at the first hearing scheduled for the 10th January 2013 despite explicit warnings given to him by Ms. Carroll as to the possible consequences if he did not appear to give evidence. However, the fact that a certain amount of inconvenience was caused to all the various parties involved in the hearing is not, in the Panel’s view, a relevant consideration in deciding the appropriate sanction to be imposed upon Mr. IS-1530. Furthermore, the Panel is satisfied from hearing the evidence of Mr. IS-1530 and Mr. [...] that Mr. IS-1530 did not intend any disrespect, did not fully understand until very late in the day the implications of not giving evidence and took the attitude that he had admitted the violation and was prepared to accept any reasonable sanction. It was in these circumstances that he appreciated neither the perils of failing to appear at the hearing nor the potential advantages to him of appearing.

The Panel has had the opportunity to assess Mr. IS-1530's credibility by hearing his oral testimony and the Panel is satisfied that Mr. IS-1530 was an honest and truthful witness. He has given evidence that he did not intend to enhance his performance in the sport by smoking the cannabis. The burden of establishing this lies upon the athlete. In David, *A Guide to the World Anti-Doping Code* (2008) the author notes in a footnote:

“A tribunal cannot infer that there is no intention to enhance performance from the characteristics of the specified substance and the sport which the athlete who has taken the substance participates in.”²

Thus, the mere fact that cannabis is not a performance-enhancing drug is not in itself sufficient evidence to warrant the inference that Mr. IS-1530 did not take the cannabis with an intention to enhance his performance.

Furthermore, Article 10.3.3 requires corroborating evidence of the lack of intent in addition to the athlete's word. However, in the unusual circumstances of this case, the Panel is satisfied that such corroborating evidence exists.

First, while the non-performance-enhancing nature of the substance is not in itself sufficient evidence from which one can draw an inference of a lack of intent, that is not to say that the nature of the substance is irrelevant and its lack of performance-enhancing potential reduces the evidential burden which lies on the athlete in establishing a lack of intent. In the commentary on the equivalent Article in the World Anti-Doping Code (Article 10.4), the commentary points out that the distinction between Specified Substances and Prohibited Substances is that *“there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible non-doping explanation.”* Cannabis is a Specified rather than a Prohibited Substance. The commentary continues:

“This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type

² Page 173, footnote 18, citing SDT 9/04, NZRL –v- Erihe www.sportstribunal.org.nz.

of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance ... generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of intent to enhance sport performance."

Thus, the non-enhancing nature of the cannabis is a factor which may be considered when taken into account with other factors.

Secondly, there is the evidence from Mr. [...], who is [...] Mr. IS-1530's coach and [...], that Mr. IS-1530's primary objective was injury prevention and that the club which Mr. IS-1530 joined taught Mr. IS-1530 and some of his friends who also joined how to use their bodies correctly and how to prevent injuries. It is clear that Mr. IS-1530's participation in the sport of weightlifting was an adjunct to the primary objective of keeping fit and healthy in a way that avoided injuries. Thus, it seems inherently unlikely that Mr. IS-1530 would have been sufficiently concerned with the results of a competition which he entered as a spur of the moment decision on a very casual basis to seek to take a prohibited substance with a view to enhancing his performance.

Thirdly, Mr. [...] also gave evidence that the weightlifting community in Ireland, which operates at an entirely amateur level, does not have the same awareness of the extent to which socialising by athletes may involve doping in sport issues compared with other sports particularly those with a professional dimension and he acknowledged that they may have been at fault in not making members such as Mr. IS-1530 more aware of the extent to which ingesting certain substances purely in the context of socialising and which were not performance-enhancing could nonetheless constitute prohibited substances. It is only fair to say that the Association is very conscious of the doping issue and has taken steps to increase the awareness of people in the weightlifting community as to the problem.

Finally, there is the important fact that the Association, though prosecuting the case against Mr. IS-1530 as it was obliged to do, accepted without reservation that Mr. IS-1530 did not have any such intent and made that concession at least in part on the

basis of the personal knowledge of the officers of the Association of Mr. IS-1530. In circumstances where there is no dispute between the two sides about a particular proposition (i.e. that Mr. IS-1530 did not have any performance-enhancing intent), it seems to the Panel that it would be perverse for the Panel to find nonetheless that the athlete had failed to establish a lack of such intent, having regard in particular to the notorious difficulties of establishing issues of intent or lack of intent.

Accordingly, the Panel is satisfied that there is objective evidence available to it, apart from Mr. IS-1530's own word, which establishes to the Panel's comfortable satisfaction that Mr. IS-1530 did not have any intent to enhance his performance. As noted above, no issue arises as to any use of the cannabis to mask the use of any performance-enhancing substance.

The Panel is therefore satisfied that it has the discretion to impose a sanction which ranges from a reprimand to a period of ineligibility of 2 years. The commentary on the World Anti-Doping Code states that *"It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases."* However, it does seem to the Panel that the circumstances of this case are most unusual. Although not entirely unprecedented in the Panel's experience, it seems to be a rare situation that an athlete enters a competition for the very first time on the same day that he first joins the relevant sporting organisation and then finds himself selected for testing. Indeed, it occurs to the Panel to ask whether the resources of national governing bodies are best employed by selecting persons in this type of situation and at this entry level of the sport for testing. The circumstance of Mr. IS-1530's first entry into the sport and into the Association, his immediate acknowledgement of the violation, Mr. IS-1530's evidently sincere expression of regret not only for his mistake but for the trouble he had caused to both his Association and the sport generally and his lack of any wrongful intent are all factors which in combination satisfy the Panel that this is an appropriate case which warrants a reprimand rather than a period of ineligibility.

The fact that a violation has been found is in itself a matter of some significance. Because the Panel had formed the view set out above immediately following the hearing on the 23th January 2013, the Panel communicated the outcome to Mr.

IS-1530 and the Association on the evening in question and drew Mr. IS-1530's attention to the fact that if he were to commit a second violation, there is less flexibility in the Rules in how a second violation is treated and so the finding of a violation in itself has certain consequences of which he needs to be aware.

In these circumstances, the Panel reprimands Mr. IS-1530 but does not impose any period of ineligibility on him.

Michael M. Collins SC
Ms. Sarah Keane
Mr. Martin Walsh

11th April 2013