

**IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL**

**IN THE MATTER OF  
ATHLETICS IRELAND**

**V**

**Athlete IS-1532**

**DECISION**

1. This is the written decision of the Irish Sport Anti-Doping Disciplinary Panel (the "Panel") in proceedings brought by Athletics Ireland under the Irish Anti-Doping Rules (2009 Version) (the "Rules") against IS-1532, an athlete competing in the discipline of marathon running.
2. The anti-doping rule violation alleged against Mr. IS-1532 was that he was in breach of Article 2.1 of the Rules in that a prohibited substance, namely, recombinant erythropoietin ("EPO"), was found in a sample of urine taken from him during out-of-competition testing on 2011 in , United States.
3. An analysis of Mr. IS-1532 's "A" sample was conducted by the Deutsche Sporthochschule Köln Institut für Biochemie. The analytical report in

respect of the analysis of Mr. IS-1532 's sample dated 3 January 2012 disclosed the presence of recombinant erythropoietin. The report also noted the detection of a novel erythropoiesis stimulating protein. EPO is a Prohibited Substance on the World Anti-Doping Code 2011 Prohibited List maintained by the World Anti-Doping Agency (WADA).

4. The analytical report was immediately furnished to the Irish Sports Council which then conducted an initial review pursuant to Article 7.2 of the Rules to determine whether any therapeutic use exemption had been granted to Mr. IS-1532 and, if so, to determine whether the presence of recombinant EPO was consistent with a valid and applicable therapeutic use exemption held by Mr. IS-1532 and to determine whether there had been any apparent departure from the International Standards for Testing or for Laboratories that might have caused the analytical finding. The review was carried out by the Irish Sports Council on 9 January 2012. In a certificate dated 9 January 2012, the Irish Sports Council certified that its review did not reveal the existence of a valid and applicable therapeutic use exemption in Mr. IS-1532's favour or any departure from the International Standard for Testing or for Laboratories in force at the time of testing or analysis which may have caused the adverse analytical finding.
5. The results of the adverse analytical finding were communicated to Mr. IS-1532 by the Irish Sports Council by letter dated 10 January 2012. The purpose of that letter was to notify Mr. IS-1532 of the alleged violation of the Rules. Mr. IS-1532 was provided with detailed information and extensive documentation with that letter. He was informed of his right to have his "B" sample tested in order to determine whether it disclosed the same substance found in the "A" sample. He was informed that under the Rules any such request had to be made by 24 January 2012 failing which his right to have the "B" sample analysed would be deemed to have been waived. Mr. IS-1532 was also informed that he had the right to admit or deny the alleged violation to the Panel by 31 January 2012

under Article 7.3.2.8 of the Rules. Mr. IS-1532 was informed that if he admitted the alleged violation, the consequences or sanctions to be imposed in respect of that violation would have to be determined by the Panel and that he had a right to a hearing before the Panel. He was also informed that if he failed to admit or deny the alleged violation by 31 January 2012, he would be deemed under the Rules to have admitted the violation. The potential consequences or sanctions in respect of the alleged violation were also set out in that letter.

6. On the same date, the Irish Sports Council wrote to the Secretary of the Panel informing the Panel of the alleged violation and enclosing a copy of the correspondence and other documentation which it had furnished that day to Mr. IS-1532.
7. The Irish Sports Council also wrote to the CEO of Athletics Ireland on the same date notifying him of the alleged anti-doping rule violation.
8. By letter dated 11 January 2012, Athletics Ireland informed Mr. IS-1532 that he was provisionally suspended in accordance with Article 7.6.2 of the Rules. A copy of that letter was furnished to the Panel by Beauchamps, the Solicitors acting for Athletics Ireland on the same date.
9. Immediately on receipt of the letter from the Irish Sports Council, Mr. IS-1532 made contact with Dr. Una May, Director of Anti-Doping with the Irish Sports Council. Following that contact, in an email dated 11 January 2012, Mr. IS-1532 contacted the Secretary of the Panel to inform her that he wished to admit the anti-doping rule violation and to have the matter disposed of as soon as possible.
10. A hearing panel was immediately convened and agreed to conduct a hearing on 17 January 2012. Athletics Ireland agreed to the expedited procedure and agreed to furnish a written submission in advance of the hearing. The Panel gave directions in respect of the hearing with the agreement of the parties to enable the hearing to proceed on an

expedited basis. Those directions were communicated by the Secretary of the Panel to Mr. IS-1532 by letter dated 13 January 2012. That letter was copied to the Irish Sports Council and to Athletics Ireland.

11. The International Association of Athletics Federations (the "IAAF") and WADA were informed of the hearing and of their right to attend the hearing as observers. However, both the IAAF and WADA informed the Secretary that they did not intend to appear at the hearing.
12. A written submission was received from Beauchamps Solicitors on behalf of Athletics Ireland on 16 January 2012. A written submission was received on behalf of Mr. IS-1532 from [...] Solicitors in advance of the hearing on 17 January 2012.
13. The hearing took place on 17 January 2012. Mr. IS-1532 attended and was represented by [...] of [...] Solicitors. Athletics Ireland was represented by Gary Rice of Beauchamps Solicitors and by representatives of Athletics Ireland. Dr. Una May attended on behalf of the Irish Sports Council as an observer.
14. It was confirmed with the parties at the outset of the hearing that the purpose of the hearing was to determine the appropriate consequence or sanction to be imposed in respect of the admitted violation. Mr. [...] confirmed on behalf of Mr. IS-1532 that formal proof was not required in respect of any of the documentation produced to the Panel and that his submissions would be directed to the issue of sanction.
15. Detailed and helpful submissions were made by Mr. Rice on behalf of Athletics Ireland. In summary, Athletics Ireland submitted:
  - (a) Mr. IS-1532 had admitted the violation of Article 2.1 of the Rules by virtue of the presence of EPO in his urine sample.
  - (b) There was no evidence to support any elimination or reduction of the period of ineligibility provided for in Article 10.1 of the Rules, namely, a two year ban.

- (c) Athletics Ireland were not making any case that that period should be increased by virtue of any aggravating circumstances.
- (d) The imposition of a two year ban was appropriate in the circumstances.
- (e) Athletics Ireland did not object to the period of ineligibility commencing as of the date of Mr. IS-1532's provisional suspension (on 11 January 2012) or as of the earlier date of sample collection (on [...] 2011).
16. Mr. Rice drew the Panel's attention to a previous decision involving an Irish track athlete where the Panel had imposed a sanction of two years ineligibility for the presence and use of EPO in violation of Articles 2.1 and 2.2 of the Rules.<sup>1</sup>
17. Mr. [...] then made submissions on behalf of Mr. IS-1532. He had also recently furnished an extremely helpful written submission. It was apparent to the Panel that having considered the written submissions furnished on behalf of the parties that there were no factual matters in dispute between the parties.
18. In his submissions, Mr. [...] stated that Mr. IS-1532 immediately admitted the doping violation, had at no stage sought to resile from that admission and had offered assistance to the Irish Sports Council and Athletics Ireland in relation to the circumstances of the violation. Indeed, at the hearing, Mr. IS-1532 furnished to the Irish Sports Council some details of the order which he had placed for the EPO over the internet and other details in relation to the purchase of the product. It was also confirmed on his behalf that he was prepared to provide any other information required by the Irish Sports Council and Athletics Ireland in relation to the circumstances of the violation.

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<sup>1</sup> See *In the matter of the Athletics Association of Ireland and Cathal Lombard*: Decision dated 12 August 2004.

19. Mr. [...] made it clear that while not in any way seeking to diminish the seriousness of the violation, it was Mr. IS-1532 's first violation and that he had provided full cooperation and support to the Irish Sports Council and Athletics Ireland in relation to the circumstances of the violation. Mr. [...] was anxious to stress that there were serious health issues involved and went on to describe them in the course of his submission.
20. He explained that on [...] 2010, Mr. IS-1532 had attended Dr. [...] of [...] Medical Practice in [...] complaining of depression. Mr. IS-1532 was prescribed the anti-depressant Lexapro (10mgs per day) and took that medication until [...] 2011. However, he explained to the Panel that Mr. IS-1532 experienced side effects from the use of that drug including suicidal tendencies. That was confirmed by Mr. IS-1532. In [...] 2011, Mr. IS-1532 moved to another doctor, Dr. [...] under whose care Mr. IS-1532 remained during 2011. Due to the side effects, Mr. IS-1532 stopped taking Lexapro in [...] 2011. He was prescribed Zolpiden, a sleeping tablet, which he took in [...] 2011. Mr. IS-1532 described himself as being in a "bad place" and stated that he had ceased to enjoy his running and participating in his sport.
21. It was explained that he had logged on to the internet and, in particular, to the message board "letsrun.com" where he saw messages relating to websites where EPO could be acquired. In answer to questions from the Panel, Mr. IS-1532 confirmed that he read messages on that message board in relation to EPO and it appeared to be commonly used albeit not necessarily by competitive athletics. Mr. IS-1532 explained that he purchased EPO from a source found on that internet site and had self-injected the EPO on one occasion only on [...] 2011, the day before he was tested on [...] 2011.

22. It was confirmed by Mr. [...] on behalf of Mr. IS-1532 that Mr. IS-1532 wished to apologize to the Irish Sports Council, to Athletics Ireland and to all his family for the anti-doping violation and for the embarrassment and distress which he had caused. Mr. [...] in the course of his submissions placed considerable weight on the health issues which Mr. IS-1532 had been experiencing in the twelve months or so prior to the violation including depression. The Panel (which includes as one of its members, Dr. Pat O'Neill) had no doubt that the health issues described by Mr. [...] and confirmed by Mr. IS-1532 himself were genuine.
23. Mr. [...] concluded his submission by requesting that in light of all of the circumstances outlined in the submissions made, the Panel ought not to increase the period of ineligibility to be imposed over and above the period of two years which Mr. IS-1532 accepted had to be imposed.
24. Having heard the submissions, the Panel then retired briefly to consider the evidence and submissions before returning to give its oral decision which it then proceeded to give.
25. In light of the fact that Mr. IS-1532 had admitted the anti-doping rule violation alleged against him prior to the hearing, the function of the Panel was solely to determine the appropriate consequence or sanction to be imposed in respect of the violation. The admitted violation was a breach of Article 2.1 of the Rules by virtue of the presence of a prohibited substance, namely, EPO. Article 10.1. of the Rules provides for the relevant penalty to be imposed in respect of a first violation of Article 2.1. This was Mr. IS-1532's first violation.
26. Article 10.1 provides that the period of ineligibility to be imposed for such a first violation of Article 2.1 shall be *"two years' ineligibility unless the conditions for eliminating or reducing the period of ineligibility as provided for in Articles 10.3 and 10.4 of the Rules, or the conditions for increasing the period of ineligibility, as provided for in Article 10.5, are met"*.

27. It was common case that Articles 10.3 and 10.4 of the Rules did not apply. Article 10.3. has no application since the substance in question was not a "*Specified Substance*". Similarly, no case was made that the period of ineligibility which would otherwise be applicable under Article 10.1 should be limited or reduced based on "*exceptional circumstances*" under Article 10.4. It was further accepted by the parties that the provisions of Article 10.4.3. in relation to "*substantial assistance in discovering or establishing anti-doping rule violations*" did not apply in the present case notwithstanding the co-operation provided by Mr. IS-1532 in relation to the violation.
28. While there are circumstances in which the period of ineligibility which would otherwise be applicable under Article 10.1 could be increased by virtue of the presence of aggravating circumstances as outlined in Article 10.5. of the Rules, it was properly accepted by Athletics Ireland that no such aggravating circumstances existed in the present case. There is, therefore, no basis for increasing the period of ineligibility otherwise applicable.
29. In those circumstances, the period of ineligibility which the Panel was required to impose is that provided for in Article 10.1, namely, a period of ineligibility of two years (i.e. a two year ban).
30. The next issue which the Panel had to determine was the date from which the period of ineligibility should run.
31. Article 10.7 of the Rules provides that:

*"Except as provided below, the period of ineligibility shall start on the date of the decision providing for ineligibility".*
32. There are a number of circumstances in which this principle may be altered and where the period of ineligibility may commence at an earlier date. Under Article 10.7.3., an athlete is entitled to receive a credit for any period in which he or she is provisionally suspended in calculating

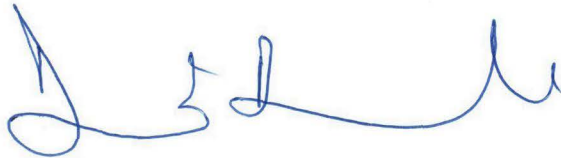


the period of ineligibility. Further, under Article 10.7.2., it is open to the Panel to direct that the period of ineligibility should commence "*as early as the date on which the anti-doping rule violation last occurred, which shall be deemed in a case involving sample collection to be the date of sample collection*". The Panel has the discretion to provide for the commencement of the period of ineligibility as of the date of sample collection, where the athlete "*promptly ... admits the anti-doping rule violation after being notified of the alleged anti-doping rule violation by the Irish Sports Council*". The Panel is satisfied that Mr. IS-1532 did promptly admit the violation. He was informed of the violation by letter from the Irish Sports Council dated 10 January 2012. He admitted the violation on receipt of that letter on 11 January 2012. The Panel is satisfied, therefore, that the period of ineligibility in this case should commence on [...] 2011.

33. The Panel wishes to stress that the violation issue in this case is an extremely serious one which cannot under any circumstances be condoned or excused. The Panel is, however, satisfied that there were particular circumstances and health issues in this case which were relevant to the athlete's decision to commit the violation. The Panel is satisfied that the issues raised on behalf of Mr. IS-1532 are genuine and strongly urges the parties to ensure that those issues are closely monitored and addressed. The Panel understands that this is being done. Athletics Ireland and the Irish Sports Council are to be commended for the manner in which they have handled this difficult case.
34. The Panel would like to thank the parties and their legal representatives for their co-operation in ensuring that the proceedings could be dealt with and concluded in an expedited manner.
35. The Panel would also again thank its Secretary, Ms Nicola Carroll, for her great efforts and in bringing the proceedings on for hearing in such a

speedy manner and for her hard work and assistance generally in relation to the matter.

Dated 19 January 2012.

A handwritten signature in blue ink, appearing to be 'David Barniville', written over a horizontal line.

SIGNED ON BEHALF OF THE PANEL BY  
DAVID BARNIVILLE S.C.  
CHAIRMAN