

At the Headquarters of the Malta Sports Council, Cospicua

Decision of the National Anti-Doping Disciplinary Panel

Ref: 04/2012/NADDP

Anti-Doping Commission (Malta)

Vs

Jessica Ghigo (Weightlifter with Identity Card Number 180284M)

The National Anti-Doping Disciplinary Panel (hereinafter the 'Panel') consisting of Dr Carmel Cascun as Chairman, and Notary Dr Sue Mercieca and Ms Joanna Vella as members,

Before the commencement of these procedures, Not Dr Sue Mercieca and Ms Joanna Vella declared to the Chairman that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review. The same declaration is being made by the Chairman.

Considered the Request (Ref No: 1TSTJESGHI-12/13) made by the National Anti Doping Commission on the 3rd December 2012 (Dok ADC1) to the Chairman of the 'Panel' to appoint a sitting for the hearing of a case concerning an alleged breach of the Anti-Doping Regulations, 2011 (LN 281/2011, Sports Act, Chapter 455, Laws of Malta) by Weightlifter Ms Jessica Ghigo.

Took note and reviewed all the documents that were forwarded to the 'Panel' by the Chairperson, Anti-Doping Commission, including principally the following:

- Request to the 'Panel' to schedule an anti-doping disciplinary hearing dated 3rd December 2012 (DOK ADC1);
- Doping Control Form dated 4th November 2012 (DOK ADC2)
- Email message from Manolis Lyris PhD of Olympic Athletic Center of Athens 'Spyros Louis' dated 22nd November 2012 (DOK ADC3);
- Analysis Report numbered 10660_2 issued by Olympic Athletic Center of Athens 'Spyros Louis' dated 22nd November 2012 (DOK ADC4);
- Initial Review by the NADO regarding Adverse Analytical Finding signed by the Chairperson Anti-Doping Commission (Ref No. 1TSTJESGHI-12/1) (DOK ADC5);
- Notification of Adverse Analytical Finding addressed by the Chairperson Anti-Doping Commission to Jessica Ghigo on the 23rd November 2012 (Ref No. 1TSTJESGHI-12/3) (DOK ADC6);
- Report of Adverse Analytical Finding (Ref No. 1TSTJESGHI-12/4) (DOK ADC7);
- Scheduling of 'B' Sample Analysis (Ref No. ITSTJESGHI-12/5) (DOK ADC8);

- Letter by the Chairperson Anti-Doping Commission dated the 23rd November 2012 to the President of the National Association (i.e. Malta Weightlifting Association) following an Adverse Analytical Finding (DOK ADC9)
- Letter from the Malta Weightlifting Association dated 26th November 2012 to Jessica Ghigo (DOK ADC 10);
- Undated request for Provisional Hearing signed by Jessica Ghigo (DOK ADC11);

Took note of the Notice issued by the Chairman of the National Anti-Doping Disciplinary Panel to Jessica Ghigo on the 14th December 2012 for her to appear before the 'Panel' on the 27th December 2012 (DOK NADDP1), copy of which has also been forwarded to the Anti-Doping Commission, the Malta Weightlifting Association, and the Malta Sports Council. The email sent to the Chairman by Jessica Ghigo requesting postponement of the hearing due to travelling overseas which was booked prior to the notification of the adverse analytical finding (DOK 12);

Took note of the documents tabled by Jessica Ghigo whilst giving evidence, namely:

- Medical Certificate issued on 30th November 2012 by Dr James Pocock MD MRCP(UK) MSc (DOK JG1)
- Undated Medical Certificate issued by Dr Louis Buhagiar MD FRCP(Edin) FRCP(Lond) MRCS(Eng) (DOK JG1A)
- Various documents from Jessica Ghigo's records file at Mater Dei Hospital ranging between November 2009 and August 2012 (DOK JG2 – JG35)

Heard and took note of the evidence given under oath during the hearing of the 6th February 2013 held at the Cottonera Sports Complex, Cospicua by Ms Jessica Ghigo (the athlete charged with the anti-doping breach).

Heard and took note of the evidence given under oath during the hearing of the 27th February 2013 held at the National Pool Complex by the following:

Dr Louis Buhagiar (Medical Consultant)

Mr Jesmond Caruana (President, Malta Weightlifting Association)

Heard and took note of the submissions and comments made during the hearings by advocate Dr Peter Fenech retained by the Anti-Doping Commission;

Heard and took note of the submissions and comments made during the hearing by Dr Michael Sciriha, Dr Lucio Sciriha and Dr Franco Galea, the defence advocates retained by Ms Jessica Ghigo;

During the sitting held at the Cottonera Sports Complex, Cospicua on the 6th February 2013 at 17.30 hours the parties agreed that the Panel's decision is to be written in English.

Another hearing was held at the Cottonera Sports Complex on the 27th February 2013 at 13.30 hours.

1. Preliminaries

- 1.1 In the case under review Jessica Ghigo, who is registered as a weightlifter with the Malta Weightlifting Association, at about 12.05 hrs on the 4th November 2012 was asked to provide a urine sample 'in-competition' immediately after the National Weightlifting Championships.
- 1.2 According to the procedures the 'Doping Control Form' was completed (Dok ADC2). On the 4th November 2012 at about 13.15 hours a urine sample of 125 ml volume was collected from Jessica Ghigo, and when requested to list "any prescription/non-prescription medications or supplements taken over the past 7 days and any transfusions received over the last 6 months" Ghigo's answer was: Levothyroxine 200mg, Azathioprine 175mg daily and UCDA 1000mg. Jessica Ghigo's urine sample was sealed in two containers marked 'A' and 'B'.
- 1.3 The urine samples were sent to a WADA¹ accredited laboratory at the Olympic Athletic Center of Athens 'Spyros Louis'. On the the 22nd November 2012 this laboratory issued its analysis report number 10660_2 under the signature of Laboratory Director Dr Manolis Lyris PhD. In this report, *inter alia*, it was declared that:
- Event/status of Control: In Competition Testing
 - Sport: Weightlifting
 - Type of Sample: Urine
 - Chain of Custody Status: According to WADA specifications
 - Sample Code: A416770
 - Sex: Female
 - Substance Identified: Bendroflumethiazide**
 - ** Bendroflumethiazide is a diuretic (S5 class of Prohibited Substances). The presence of A) Bendroflumethiazide; B) Bendroflumethiazide artefact, (4-Amino-6-trifluoromethyl-benzene-1,3-disulfonic acid diamide were confirmed in the sample.
 - Result: Adverse Analytical Finding
- 1.4 According to the 2012 Prohibited List² as published by WADA class S5 Diuretics and other masking agents includes thiazide diuretics e.g. bendroflumethiazide.
- 1.5 On the 23rd November 2012 Jessica Ghigo was informed that a prohibited substance was detected in the urine sample that was collected from her on the 4th November 2012 (Dok ADC2). Ms Ghigo was also given a Report of Adverse Analytical Finding (Dok ADC6) in which it was stated that bendroflumethiazide was identified in her urine sample. It was added that the presence of a. Bendroflumethiazide and b. Bendroflumethiazide artefact, (4-Amino-6-trifluoromethyl-benzene-1,3-disulfonic acid diamide were confirmed in the sample as also mentioned in the laboratory analysis report issued by Dr Manolis Lyris. Then Ms Ghigo was told that the presence of such a prohibited substance or its metabolites or markers was in violation of the WADA Code (Art 2.1) and LN 281/2011 (Art 3.3) of the Laws of Malta. Furthermore Jessica Ghigo was

¹ World Anti-Doping Agency

² The World Anti-Doping Code, The 2012 Prohibited List (published on 24th August 2011 effective as from 1st January 2012).

informed of the possible consequences which such a breach may attract in terms of the WADA Code (Art 10.1 and Art 10.2) and LN 281/2011 (Art 11.1 and Art 11.2).

- 1.6 Also on the 23rd November 2012 the Chairperson of the Anti-Doping Commission informed the President of the Malta Weightlifting Association of the Adverse Analytical Finding concerning Jessica Ghigo (Dok ADC9). In turn the President of the Malta Weightlifting Association on the 26th November 2012 notified Ms Ghigo that the Malta Weightlifting Association (MWA) is “temporarily suspending you with effective immediately from all activities organised by the MWA” (Dok ADC10).
- 1.7 Although Jessica Ghigo was given the opportunity to request the analysis of Sample ‘B’ by the 30th November 2012, Ms Ghigo did not exercise such a right.
- 1.8 Nevertheless since Ms Ghigo did not accept the provisional suspension imposed on her by the Malta Weightlifting Association (Dok ACD11), a provisional hearing in accordance with Art 8 of the WADA Code and Art 8.5 of LN 281/2011 was held by the Malta Weightlifting Association on the 10th December 2012 (Dok 13). The Board appointed by the Malta Weightlifting Association concluded that:
- a. The Board is not finding Jessica (responsible) of intentional guilt, but there was lack of experience and professionalism in the manner how she disclosed the information prior to the doping test³;
 - b. The Board concluded that although in their opinion she is innocent, yet she would still be suspended from participating in weightlifting activities until such time that a sentence is handed down by the NADO board.⁴

2. The Merits

- 2.1 It is not contested that Jessica Ghigo when summoned for the doping test, she only disclosed medicines (Levothyroxine, Azathioprine and UDCA) which are not on the WADA list of prohibited substances. However Ms Ghigo has failed to disclose the diuretic medicine she was taking (later on discovered to be Bendroflumethiazide) which is found on the WADA list of prohibited substances. The anti-doping test was carried out on the 4th November 2012 during the Malta championships organised by the Malta Weightlifting Association.
- 2.2 The presence of this prohibited substance was established after the urine sample taken from Ms Ghigo was sent for analysis to an accredited WADA laboratory in Athens. The result of the laboratory analysis was not challenged by Ms Ghigo, who thereafter and during the proceedings before the Panel confirmed that she was taking Bendroflumethiazide tablets to control a medical condition she was

³ “Il-Board mhux isib lil Jessica ta’ htija intenzjonata, biss kien hemm nuqqas ta’esperjenza u professjonalita kif tat l-infomazzjoni qabel id-doping test.”

⁴ “Il-Board ikkonkluda li ghalkemm fil-fehma taghna hi innocenti, xorta wahda se tigi sospiza milli tippartecipa f’attivitajiet tal-weightlifting sakemm tkun deciza s-sentenza tal-board tan-Nado.”

suffering from. During the proceedings Ms Ghigo stated that she had taken the substance on the Friday (afternoon) before the Malta Weightlifting Association championships that were held on Sunday the 4th November 2013. Due to an oversight she had forgotten to note down this medicine which contained the prohibited substance as she was taking this medicine on an irregular basis in accordance with her needs to control her lower limb oedema and before the 2nd November she said she probably took the same medicine around August 2012.

2.3 Ms Ghigo confirmed that she had never requested a therapeutic use exemption. Furthermore she never queried with her medical doctor “whether the medication could be taken by sportspersons” and that “she was not aware that a therapeutic use exemption could be requested”. However she did confirm that there are a number of substances that are banned in terms of legislation.

2.4 Ms Ghigo however insisted that she had suffered from a medical condition since 2009, which condition was the reason as why that ‘prohibited’ substance was found in her body. In support of her claim she submitted various documents/extracts from her medical file held at Mater Dei Hospital (Dok JG2 – JG35). Also she produced reports from Medical Consultants Dr James Pocock (Gastroenterologist and Hepatologist) and Dr Louis Buhagiar (Physician and Nephrologist) which basically affirm that Ms Ghigo suffers from active chronic hepatitis and hypothyroidism. These last two reports were issued after the anti-doping test of the 4th November 2013. In Dr Pocock’s report it is stated that Ms Ghigo is taking Eltroxin, Azathioprine and Ursodeoxycylic Acid regularly, and Bendroflumethiazide occasionally. Dr Buhagiar in his report stated that “.....we have prescribed various proptocols, one of which incorporates bendroflumethiazide to conteract secondary hyperaldosteronism”. Dr Buhagiar was the consultant who looked after Jessica Ghigo when she was admitted into Mater Dei Hospital on the 29 October 2009, and where she remained till the 3rd November 2009.

2.5 Although it has been accepted that Bendroflumethiazide is a prescription drug, Ms Ghigo did not produce a prescription by her doctor.

2.6 During the course of the proceedings Dr Louis Buhagiar was summoned to give evidence. In brief Dr Buhagiar, after being exempted from his professional secrecy obligation, confirmed under oath that he had examined Ms Ghigo some four years ago, when after biopsy it was found that she was suffering from active chronic hepatitis. Then Ms Ghigo was treated by prednisolone, which treatment was successful.

2.7 Dr Buhagiar added that as this is a chronic disease which may result in swelling of the legs, diuretics must be administered permanently to relieve swelling. The effect of diuretics is to increase urine production and to lower the sodium concentration in the body, and which in turn could lead to temporary loss of weight over a few days as a result of loss of water. However Dr Buhagiar also said that it was up to the patient to decide when to take up the medicine, and depending on the need “a decision that had to be taken on a day-to-day basis”. Although Dr Buhagiar stated that he had prescribed the diuretic

Bendroflumethiazide drug some two and a half years ago, he could not recall whether he had then given Ms Ghigo a prescription.

- 2.8 According to Dr Buhagiar the diuretic taken by Ms Ghigo was not performance enhancing, but could in actual fact have the opposite effect as it could lead to loss of potassium. Although Dr Buhagiar stated that he was aware that Ms Ghigo was involved in sports, he declared that he was not aware that Bendroflumethiazide was a prohibited substance by WADA as he was not intimately familiar with the list of prohibited substances. Nor was he aware that the drug in question could be used as a masking agent.
- 2.9 Evidence under oath was also given by Mr Jesmond Caruana, who is the President of the Malta Weightlifting Association. Mr Caruana stated that on the day of the anti-doping test the weightlifter Jessica Ghigo had participated as a sole female participant in the 75 kg category. During the event Ms Ghigo was required to lift a prescribed weight, which she did. Therefore she was declared the winner of her category, although no records were broken on that date by Ms Ghigo.

3. Considerations

- 3.1 There is no doubt that the athlete Jessica Ghigo had allowed a prohibited substance, namely bendroflumethiazide, to enter her body. In fact she admitted this fact although she claimed that the substance was taken as medicine due to a medical condition which she was suffering from since 2009. Here attention is drawn to the provisions of Art 3(1) and Art 3(2) of the Anti Doping Regulations (LN 281/2011) which in essence: (i) require the athlete to know what constitutes an anti doping rule violation and the substances included in the list, (ii) require the athlete to ensure that no prohibited substance enters his body (iii) make the athlete responsible for any prohibited substance found in his/her body without the necessity of demonstrating intent, fault, negligence or knowing use on the athlete's part.
- 3.2 Nevertheless Ms Ghigo had failed to disclose this substance when she was asked to declare the medication use in the Doping Control Form prior to the taking of the urine sample.
- 3.3 Nor did Ms Ghigo apply to for a therapeutic use exemption as provided by Art 5(5) of the Anti Doping Regulations (LN 281/2011)
- 3.4 In support of her claim she produced documents/extracts from the medical records of Mater Dei Hospital. Furthermore she produced certificates from her medical consultants Dr James Pocock and Dr Louis Buhagiar. Also Dr Louis Buhagiar had given 'viva voce' evidence under oath during the hearing before the Panel when he had given details about Ms Ghigo's medical history and condition. Then he also confirmed that Bendroflumethiazide was one of the medicaments prescribed by him to control the medical condition of Ms Ghigo which she was required to take on an "as required" basis to treat the swelling in the lower limbs.

3.5 The Panel noted that although Jessica Ghigo was taking part in the National Weightlifting Championships, she was the sole female participant in her category and although she had lifted the prescribed weight, she had broken no record. Also as the effect of this diuretic substance is to reduce weight, it is unlikely that (in the case of the sport practised by Ms Ghigo) the substance was taken by the athlete to enhance performance. In this regard Dr Buhagiar also expressed the opinion that it could even have the opposite effect.

3.6 Although the Panel is satisfied that the diuretic medicine was taken by Ms Ghigo to control her medical condition (as also corroborated by Dr Louis Buhagiar), and not to enhance her sport performance or (taking into account all the circumstances) to mask the use of a performance enhancing substance, the Panel is disappointed by Ms Ghigo's incomplete disclosure of the medication at the pre-testing stage, and also by her complete ignorance or failure to apply for therapeutic use exemption when she was suffering of a potentially serious (though controlled) medical condition since 2009.

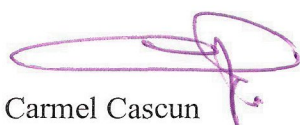
4. The Decision

Therefore on the basis of the forgoing, the National Anti-Doping Disciplinary Panel decides this anti-doping case brought by the National Anti-Doping Commission against the athlete Ms Jessica Ghigo by finding that:

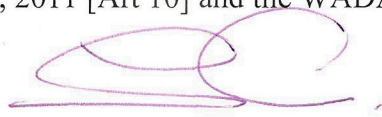
- Ms Jessica Ghigo has breached the Anti-Doping Regulations, 2011 (Art 3.3) and the WADA Code (Art 2.1) for having used medicine which contained the prohibited substance Bendroflumethiazide after having tested positive during the National Weightlifting Championships on the 4th November 2012.
- Ms Jessica Ghigo's intention, when she took the medicine containing the substance prohibited in the WADA list, was not intended to enhance her performance in the sport she practices or mask the use of a performance enhancing substance.

And therefore the Panel in terms of what is provided in the Anti-Doping Regulations, 2011 [Art 11(4)] and the WADA Code [Art 10.4], is imposing on Ms Jessica Ghigo a suspension of ineligibility from any sports activities for a period of six (6) months commencing the date of this decision in terms of LN 281/2011 ((Art 11(20)) and the WADA Code (Art 10.9.4).


The Panel also directs the Malta Weightlifting Association to annul the results and withdraw any medals or prizes obtained by Ms Jessica Ghigo during the National Weightlifting Championships held on the 4th November 2012 according to the Anti-Doping Regulations, 2011 [Art 10] and the WADA Code [Art 9],



Dr Carmel Cascun



Dr Sue Mercieca



Ms Joanna Vella

This 19th day of March 2013

At Cospicua, Malta