

APPEAL TRIBUNAL

NATIONAL ANTI DOPING PANEL

Charles Flint QC
Lorraine Johnson
Dr Barry O'Driscoll

Kenny Anderson

("the Appellant")

-and-

UK Anti-Doping

("the Respondent")

FINAL DECISION OF THE APPEAL TRIBUNAL

Introduction

1. This is the final decision of the Appeal Tribunal of the National Anti-Doping Panel convened under article 12.1 of the NADP Procedural Rules to decide an appeal brought by Kenny Anderson against the decision made on 15th May 2013 by the Anti-Doping Tribunal.
2. The Appellant is a 30 year old professional boxer who was subject to in competition testing at the British Super Middleweight championship held at Sheffield on 20th October 2012. The test revealed the presence of amphetamine, a prohibited substance, in the boxer's sample. It is not disputed that a doping violation was committed contrary to article 2.1 of the rules. Before the tribunal the boxer's case was that he bore no or no significant fault or negligence on the basis that a drink which he took the day before the competition had been

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spiked by another. Following a hearing at which the tribunal considered the evidence submitted it was decided that the boxer's case was not proved on the balance of probabilities. The tribunal decided that a doping offence had been established, the Appellant should be ineligible for competition for a period of 2 years from 9th November 2012, the results from the bout on 20th October 2012 should be disqualified, and that prize money of £15,000 should be repaid to the British Board of Boxing Control.

3. The Appellant appealed on 4th June 2013. The notice of appeal raised two grounds of appeal. The first was that it was reasonably anticipated that fresh evidence could be available. The second was that the tribunal had misdirected itself as to the standard of proof and approached the Appellant's evidence with excessive caution. The notice asked for further time to obtain the fresh evidence.

Procedural History

4. On 25th June the chairman, with no objection from UKAD, adjourned the proceedings to 1st October to give the Appellant further time to make enquiries with a view to obtaining fresh evidence. By October it emerged that the Appellant was ill and unable to give proper instructions to his lawyers. On 30th October the chairman made the following directions with a view to an appeal hearing to be fixed for 27th November:

1. *It is regrettable that the appellant is in hospital and unable to give instructions on this appeal. But there is a requirement under the rules that an appeal be heard expeditiously and in general within 40 days of an appeal being lodged.*
2. *The appellant has been granted considerable further time with a view to obtaining evidence for the appeal, and that application was not initially opposed by UKAD. But now more than a year has elapsed since the alleged violation and a statement from the BBBC makes clear the difficulties that have been caused by this appeal which prevents the BBBC from disclosing that the appellant has been disqualified by the tribunal "unless and until the decision that an Anti-Doping Rule Violation was committed is affirmed on appeal". I have no power to override the strict rules on confidentiality and the solicitors acting for the appellant have not been able to consent to publication, which might have allowed the BBBC to re-run the championship bout.*
3. *I am therefore clear that this appeal must now either be pursued or abandoned. I make the directions below and although I cannot rule out any application to extend any time limit I would be most unlikely to give further time. I have no power to strike out an appeal if directions are not complied with so the*

directions envisage that if the appellant's solicitors do not have instructions to file the required documents in time then the directions will be truncated to allow the appeal tribunal to dispose of the appeal, without the need for either party to attend any hearing.

5. Unfortunately the medical condition of the Appellant has not improved and he has been unable to give instructions to his solicitors for the appeal to be pursued. In those circumstances this tribunal has decided the appeal on the papers, and without a hearing, under article 8.4 of the NADP Procedural Rules.

The grounds of appeal

6. The first ground of appeal must be dismissed. The Appellant has been unable to produce any further evidence which would enable this tribunal, exercising its powers under article 12.4 of the NADP Procedural Rules, to hold a fresh hearing.
7. On the second ground of appeal the only specific point raised in the notice of appeal was that the tribunal was wrong to find that there was no independent evidence corroborating the Appellant's case. We have carefully considered the decision of the tribunal, particularly at paragraphs 4.7 to 4.10. The reasoning in those paragraphs was not based on any error of law and is a clear and persuasive finding of fact on the evidence submitted. That ground of appeal must also be dismissed.

Decision

8. For the reasons given above, the appeal is dismissed. The decision of the tribunal is affirmed as follows:
 - (1) A doping offence contrary to Article 2.1 of the Anti-Doping Rules has been established;
 - (2) The period of ineligibility is 2 years from 9th November 2012;
 - (3) The Appellant's results from the bout on 20th October 2012 are disqualified;
 - (4) The prize money of £15,000 must be repaid to the British Board of Boxing Control.

Right of Appeal

9. As this is a decision on appeal under Rule 12 of the NADP Procedural Rules, neither the athlete nor UKAD has any further right of appeal. However under Rule 13.6 of the UK Anti-Doping Rules, the International Federation and WADA have a right to appeal this decision to the Court of Arbitration for Sport.

Charles Flint QC

For the Appeal Tribunal

28 November 2013

Charles Flint.



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