



FIVB Anti-Doping Panel Decision

In the matter of
Ms So-Jin LEE
(Korea)

14 October 2010





THE FIVB ANTI-DOPING HEARING PANEL

composed by

Prof. Bruno Manzella,	(Italy) Disciplinary Committee President
Dr. Annie Peytavin	(France) Medical Commission Member
Mr. Mounir Ben Slimane	(Tunisia) Disciplinary Committee Member

at the hearing which took place via telephone conference on 14 October 2010, 10am Swiss time, heard the case identified as n. 3369778:

FACTUAL BACKGROUND

1. On 1 September 2010, the FIVB was notified via ADAMS by the WADA-accredited China National Anti-Doping Laboratory regarding an Adverse Analytical Finding concerning the A-sample 3369778, which contained the prohibited substance Formoterol.
2. The above mentioned sample was taken in-competition on 28 June 2010 in Gresik (Indonesia) during the 2010 Asian Women's Club Volleyball Championship and belongs to the player Ms. So-Jin Lee (Korea, born 28 August 1987).
3. After having received a copy of the Doping Control Form by the Asian Volleyball Confederation, on 13 September 2010 the FIVB contacted the Korean Volleyball Association ("KVA") and through it informed the athlete of her right to request the analysis of the B sample and to attend the opening thereof.
4. By letter of 7 September 2010 the KVA sent to the FIVB its position on the case along with the athlete's statement and supporting documentation regarding the athlete's medical condition. In view of the submission that "the



athlete have (sic) been inhaling Symbicort (Formoterol+Budesonide) since 2008 under doctors' prescription for the treatment of her asthma and other allergic conditions" the KVA and the athlete stated they did not consider the B sample analysis as necessary.

5. In her written statement and during the hearing the athlete confirms "to have been suffering from bronchial asthma since 2008" and that "the doctor of the Ajou University prescribed for me Symbicort inhalation therapy for my Exercise-Induced-Asthma (EIA)", adding that "during preparation exercise period of the first match between the Thai team, my dyspnea symptom *aggravated and made me difficult, therefore, I inhaled my prescribed inhalation drug Symbicort once*".
6. The athlete further submits that she participated in Anti-Doping Education sessions of the Korean Anti-Doping Agency (KADA) "1-2 times yearly since 2008", where she learned that "WADA TUE Rules for Asthma Drugs (Beta-2 Agonist) was on the process of Revision, and there is a system of retroactive TUE in case of Adverse Analytical Finding of asthma drugs". In addition, the team was not accompanied by a medical doctor in the Asian Games and she did not declare Symbicort (but only Ibuprophene) on the Doping Control Form due to her limited understanding of English language.
7. The athlete concludes her arguments by stating that she has never used any other kind of drug other than Symbicort for asthma, that this kind of mistake will not happen again in the future, and asks for a "generous interpretation of her mistake".
8. The hearing via telephone conference was attended –aside from the Anti-Doping Hearing Panel– by the athlete, Ms So-Jin Lee, Mr. Phil- Soo Kim Secretary General of KT&G club team, Mr. Jo-Hong Han medical trainer, Mr. Kim interpreter and medical doctor of KVA, Mr. Yong-Min Kim assistant manager of the International Relations Department of KVA. Also in



attendance were the FIVB legal counsel Mr. Andreas Zagklis and Mrs. Alison Alvarez from the FIVB President's Office as minute taker.

9. The athlete and the KVA representatives answered questions from the Panel and were given ample opportunity to explain their position and request for a reduced sanction.

LEGAL CONSIDERATIONS

1. According to the WADA 2010 Prohibited List, the substance formoterol is included in the category S3 (Beta 2 – Agonists) and is prohibited both in- and out-of-competition.
2. According to art. 2.1 of the FIVB Medical Regulations and in accordance with the World Anti-Doping Code, the presence of this substance in an athlete's bodily specimen constitutes an anti-doping rule violation, sanctioned as per article 9.2. of the FIVB Medical Regulations.
3. The above mentioned sample belongs to the player Ms. So-Jin Lee.
4. No Therapeutic Use Exception (T.U.E.) exists, as per article 4.4 of the FIVB Medical Regulations.
5. Therefore, being the presence of the prohibited substance in the athlete's urine undisputed, the anti-doping rule violation is established.
6. Symbicort is an asthma medicine containing both Formoterol and Budesonide (the latter is also a prohibited substance but was not found by the Laboratory in the athlete's sample). The Beta2-Agonists do not only offer an efficient medicine for asthmatic and bronchial-dilatatorial therapy, but their use is also connected to doping practices (e.g. stimulating effect). It is thus the duty of the Panel to review whether or not such product was improperly used for doping rather than therapeutic purposes.
7. Furthermore, in accordance with the 2010 WADA Prohibited List "*All beta-2 agonists (including both optical isomers where relevant) are prohibited*



except salbutamol (maximum 1600 micrograms over 24 hours) and salmeterol by inhalation which require a declaration of Use in accordance with the International Standard for Therapeutic Use Exemptions."

8. Therefore, it is clear from the applicable rules that Formoterol requires a Therapeutic Use Exemption and not a declaration of use, as the athlete wrongly thought. In this respect, the Panel notes on the one hand that the rules governing asthma medication have been subject to frequent changes by WADA and that the athlete started taking Symbicort in 2008 under a different legal framework; on the other hand, however, this Panel has *emphasized on various occasions (see e.g. the FIVB Anti-Doping Hearing Panel decision of 13 September 2010 in the case of Mr. Sirianis Mendez Hernandez)* that each athlete has a duty to check the list on an annual basis and ensure that no prohibited substance enters his or her body. Thus, the Panel considers the athlete was –despite her knowledge of the medical condition– negligent in violating the duty provided in article 2.1.1 of the FIVB Medical Regulations.
9. However, according to article 9.4- third paragraph of the FIVB Medical Regulations and based on the voluminous medical file of the athlete which shows that she suffers from an allergic asthma, the Panel is convinced that the substance entered the athlete's body while inhaling Symbicort prior to a game and in a moment of dyspnoea, without a purpose to enhance her performance in volleyball.
10. Considering also the principle of proportionality in calculating the sanction to be imposed, similar jurisprudence for the same substance in other sports (see FINA Doping Panel decision 03/10, confirmed by CAS on 15 September 2010) and the fact that this is the athlete's first anti-doping violation,



Taking all the above into consideration

THE FIVB ANTI-DOPING HEARING PANEL

Concludes and Decides

1. The player SON-JIN LEE (Korea) has committed an anti-doping rule violation (presence of the prohibited substance Formoterol in her bodily specimen) according to article 2.1 of the FIVB Medical Regulation.
2. A sanction of nine (9) months of ineligibility shall be imposed on the player SO-JIN LEE, according to articles 9.2. and 9.4 of the FIVB Medical Regulations.
3. The period of ineligibility shall start on the date of the present decision, as per article 9.9 of the FIVB Medical Regulations.

Decided in Lausanne, on 14 October 2010

Dr. Annie Peytavin

Member

Prof. Bruno Manzella

President

Mr. Ben Slimane

Member