



FIVB

Disciplinary Panel

Decision

In the matter of
Mr. Kyle CALDWELL
(USA)

20 December 2013

THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2

of the FIVB Medical Regulations

and composed by

Ms. Margaret Ann Fleming, Chair	(Scotland) Disciplinary Panel Vice-Chair
Mr. Mounir Ben Slimane	(Tunisia) Disciplinary Panel Member
Dr. Annie Peytavin	(France) Medical Commission Ass. Secretary

at the hearing which took place via telephone conference

on 11 December 2013, 5 P.M. Swiss Time, heard the case identified as n. 2615746:

FACTUAL BACKGROUND

1. On 29 October 2013, the FIVB was notified by the WADA-accredited Laboratory in Los Angeles, USA regarding an Adverse Analytical Finding for the A-sample 2615746, which contained the prohibited substance "Cannabinoids/Carboxy-THC" in a concentration of 650 ng/ml.
2. The above-mentioned urine sample was taken in-competition on 24 September 2013 in Langley, Canada during the Senior Men's NORCECA Continental Championship (23-28 September 2013, hereinafter the "Tournament") and belongs to the athlete Mr. Kyle CALDWELL (USA, born 15.03.1990, hereinafter the "Athlete").
3. On 8 November 2013, the FIVB contacted USA Volleyball (hereinafter "USAV") and through it informed the Athlete of his right to request the analysis of the B sample and to attend the opening thereof.
4. On 15 November 2013, the FIVB contacted USAV to confirm whether it had received the FIVB's letter dated 8 November 2013.
5. On the same day, USAV confirmed that it had received the FIVB's letter dated 8 November 2013 and stated that it had not yet heard from the Athlete.
6. On 18 November 2013, the FIVB emailed the Athlete providing him with another deadline of 20 November 2013 to request the opening of his B Sample and informed

him that his right to have his B sample analysed would be deemed waived if he did not respond within the new deadline.

7. The Athlete did not respond within the above deadline and, therefore, was deemed to have waived his right to have his B Sample analysed.
8. By letter dated 3 December 2013, the FIVB informed the Athlete that (a) he had the right to be heard before the FIVB Disciplinary Panel either by telephone conference or by a hearing in person, (b) he was invited to send to the FIVB a document explaining his position.
9. By email dated 8 December 2013, the Athlete provided his position which stated in essence that:
 - He apologized for his actions;
 - He stated that he never had a history of using the substance or failed a drug test during his career;
 - He was having a tough time emotionally and turned to the substance to cope with his situation;
 - The substance was not performance-enhancing because it slowed his reactions and increased his food intake; and
 - He was extremely remorseful regarding this situation.
10. On 10 December 2013, the Athlete confirmed via email that he would attend the hearing scheduled for the following day by telephone.
11. On 11 December 2013, the hearing via telephone conference was attended by the Athlete. Also in attendance were the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB legal advisor Mr. Andreas Zagklis and the FIVB legal affairs manager Mr. Mark Bovet. A member of the Panel, Dr. Peytavin, was unable to join the call due to a technical problem. The Athlete agreed to continue with the hearing despite the absence of Dr. Peytavin, since the hearing was being recorded.
12. The Athlete answered questions from the Panel and was given ample opportunity to explain his position and request a reduced sanction. He confirmed the written statement of 8 December 2013, and outlined that:
 - He again apologized for taking the substance;

- He admitted that he knew what he was doing and that he took the substance more than once daily for approximately 1 ½ - 2 weeks prior to the Tournament and up until the day he left with the USAV team for Canada, which was approximately 3 days before the start of the Tournament;
- During that period he was living at home since the USAV training facilities are nearby;
- He took the substance to cope with his emotional strain caused by the onset of several personal issues, especially due to the status of relationships in his immediate family environment, because he was more concerned with his personal life than his volleyball career;
- He stated that he never wanted this to happen again, since this behavior does not represent who he is but rather his emotional breakdown in a specific period of his life;
- He stated that volleyball was usually his outlet for all emotional issues but he was not playing at the time so he had to turn elsewhere;
- He stated that he sought help after the tournament to find better ways to handle his personal situation, hiring a sports psychologist and even attending an AA session to see if it would help him;
- He admitted that he was not currently playing for a club team because he knew about the failed doping test and made interested teams aware that he would be suspended;
- He has not participated in any volleyball competitions since the end of the Tournament on 28 September 2013.

13. Shortly after the hearing, Dr. Peytavin thoroughly reviewed the file and the recording of the hearing. Having been fully informed of the file, all of the members of the FIVB Disciplinary Panel deliberated by telephone conference on 17 December 2013 over the evidence provided in the case.

LEGAL CONSIDERATIONS

14. According to the WADA 2013 Prohibited List, the substance Carboxy-THC is included in the category S8 (Cannabinoids) and is prohibited in competition. In reaching this finding, the Panel notes also the laboratory's comment that "[t]he mean concentration measured is 650 ng/mL", which is almost four times the Decision Limit of 175 ng/mL. The issue of the quantity found in the Athlete's sample will be further analysed below.
15. According to Article 2.1 of the FIVB Medical Regulations, the presence of a prohibited substance in an athlete's bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB Medical Regulations.
16. The above-mentioned sample (Nr. 2615746) belongs to the Athlete.
17. No Therapeutic Use Exception (T.U.E.) exists in this case, as per Article 4.4 of the FIVB Medical Regulations.
18. The Athlete also admitted having taken the substance in question.
19. Therefore, being the presence of the prohibited substance in the Athlete's urine undisputed, the anti-doping rule violation is established. This fact remained uncontested.
20. The Panel emphasizes that, according to Article 2.1 of the FIVB Medical Regulations

"It is each Athlete's personal duty to ensure no Prohibited Substance enter his or her body. Athletes are responsible for any prohibited substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is no necessary that intent, fault, negligence or knowing use, by the athlete's part, be demonstrated in order to establish an anti-doping violation under art. 2.1."

(emphasis added)

21. Furthermore, Article 10.2 of the FIVB Medical Regulation provides as follows:

"The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility."

(emphasis added)

22. Given that Carboxy-THC is a specified substance, the Panel shall now review whether Article 10.4 of the FIVB Medical Regulations is applicable to this case and, if so, what the applicable sanction is.
23. Article 10.4 allows the period of ineligibility to be eliminated or reduced if the Athlete can effectively establish (1) *“how a Specified Substance entered his or her body or came into his or her possession”* and (2) *“that such Specified Substance was not intended to enhance the Athlete’s sport performance or mask the use of a performing-enhancing substance”*. If the Panel finds that the Athlete has successfully met the two criteria, the Panel may issue a sanction between a reprimand and a two year period of ineligibility. The Athlete’s degree of fault will be considered in assessing any reduction of the period of ineligibility.
24. First, the Panel finds that the Athlete has, on a balance of probabilities, successfully established how the prohibited substance entered his system by admitting that he ingested the banned substance by smoking it. The Panel considers it possible that, despite the time-gap between the alleged last use and the doping control (3 days), the laboratory result could be explained by the very intense use of the substance, namely 3 times per day for a period of almost 2 weeks before the Tournament.
25. Regarding the second criterion of Article 10.4, the Athlete asserted that he ingested the substance to deal with his emotional issues caused by several personal hardships which occurred around the same time. These issues caused him to go to a *“dark place”* and use the banned substance to cope. He further claimed that the substance hindered his ability to compete at the highest level because it slowed his reactions and increased his food intake.
26. The Athlete was very candid with the Panel and openly discussed the personal issues that led to his ingestion of the substance. It is very apparent to the Panel that the Athlete was suffering from emotional stress caused by multiple serious personal issues happening at once. Moreover, the Player claimed that he took the substance while at home and discontinued using it once he left for the Tournament. If the Athlete were seeking to enhance his performance, he would most likely not have discontinued its use. It is also clear from his statement, which the Panel accepts as truthful given the candor with which the Athlete discussed his situation and the

professional assistance he sought after the Tournament, that the Athlete, in fact, believed the substance hindered his performance in competition but chose to use it because he was more concerned with his personal life than his volleyball career. Based on the above, the Panel finds that the use of cannabis was not intended to enhance the Athlete's performance or mask a prohibited substance.

27. Thus, the Panel concludes that Article 10.4 of the FIVB Medical Regulations is applicable to this case.
28. Turning now to the determination of the appropriate sanction, the Panel must take into account the Athlete's degree of fault. In this case, the Athlete's degree of fault is *significantly higher than that of volleyball athletes involved in other cannabis cases* decided by this Panel in the past.
29. The Athlete was aware that the substance was a banned substance and, yet, knowingly ingested it anyway for *an extensive period of time* and in complete disregard of the FIVB Medical Regulations. This behavior in and of itself eliminates any chance of a complete elimination of the period of ineligibility.
30. Furthermore, the Panel wishes to underline that the pattern of use discovered in this case as well as the time-proximity to an important official competition for which the Athlete's national team was preparing for weeks, allow the Panel to distinguish this case from other cases of cannabinoids. The Athlete *repeatedly* disregarded his duties as one of the best USA volleyball athletes and the positive finding was neither an accident nor a surprise to him. Instead of dealing with his emotional issues – and even with his desire to use the substance – through proper medical channels, he continued to train with the team and decided to participate in the Tournament.
31. The Panel does not have enough evidence to conclude whether the Athlete was (or was close to be) addicted to the substance, but it does find that the Athlete's decision making was exceptionally poor and does not merit a lenient approach, as is usually the approach many Anti-Doping Organisations (including the FIVB) adopt towards the same prohibited substance.
32. This conclusion is further supported by the fact the amount of Carboxy-THC found in his urine sample is almost 4 times the Decision Limit established by WADA, which

was recently increased from 18 ng/ml to 175 ng/ml. Indeed, no Anti-Doping Organisation should accept that an athlete found with such concentration of cannabinoids in his body may be allowed to return shortly to competitions.

33. On the other hand, the Athlete has been very forthright with the Panel and is clearly remorseful about using the banned substance, seeking at the same time to deal with the problems in his personal life in a different way right after the Tournament and before the notification of the positive sample by FIVB. He has withdrawn himself from competitions in order to address the issue and has taken some important steps, which appear to be fitting to the severity of the situation.
34. Having considered the above-mentioned circumstance balanced with the Player's degree of fault and considering that this is the Athlete's first anti-doping violation, the Panel holds that the Athlete shall be subject to a 1-year period of ineligibility for his violation of the FIVB Medical Regulations.
35. Given that the Athlete has voluntarily not participated in any official competitions since the end of the Tournament (28 September 2013) in which the test was conducted, the Panel finds that this period of ineligibility will start as of 29 September 2013.

Taking all the above into consideration

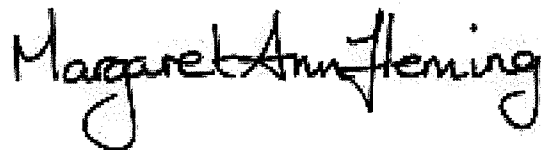
THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Mr. Kyle CALDWELL (USA) has committed an anti-doping rule violation according to Article 2.1 of the FIVB Medical Regulations.
2. A sanction of one (1) year of ineligibility shall be imposed on the athlete Mr. Kyle CALDWELL, according to Article 10.4 of the FIVB Medical Regulations.
3. The period of ineligibility shall start on 29 September 2013 and end on 28 September 2014, as per Article 10.9 of the FIVB Medical Regulations.
4. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 20 December 2013

For the FIVB DISCIPLINARY PANEL

A handwritten signature in black ink that reads "Margaret Ann Fleming". The signature is written in a cursive style with a large initial 'M' and 'F'.

Ms. Margaret Ann Fleming

Chair

NOTICE OF APPEALS

(doping cases)

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical Regulations and with the provisions of the Code of Sports-Related Arbitration (see www.tas-cas.org).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 18.6 of the FIVB Medical Regulations: "Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation."

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

Court of Arbitration for Sport

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1012 Lausanne, Switzerland

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