

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION DECISION

REGARDING MS OLGA BERESNYEVA BORN ON 12 OCTOBER 1985, ATHLETE, UKRAINE, SWIMMING

1. On 9 August 2012, Ms Olga Beresnyeva (hereinafter the “**Athlete**”) competed in the Women’s 10 km open water marathon event at the occasion of the Games of the XXX Olympiad in London, 2012 (hereafter the “**London Olympic Games**”), where she placed seventh.
2. Prior to her competition, the Athlete was requested, under the authority of the International Olympic Committee (the “**IOC**”), to provide a urine sample for a doping control on 28 July 2012 at around 18h30 in Kiev, Ukraine.
3. The A and B samples collected from the Athlete were sent to the WADA Accredited Laboratory of Cologne (hereinafter the “**Cologne Laboratory**”) as instructed by the IOC. The A sample was analysed at the time, but did not result in an adverse analytical finding.
4. After the end of the London Olympic Games, the A and B samples collected from the Athlete under the authority of the IOC were, at the IOC’s request, kept for long term storage in the Cologne Laboratory.
5. The IOC decided to perform further analyses on samples collected during the London Olympic Games. These additional analyses were performed with improved analytical methods in order to detect prohibited substances which could not be identified with the analyses performed at that time.
6. The A sample bottle was not of sufficient volume to perform a re-analysis. On 10 March 2015, the above-noted sample was re-analysed on the basis of the instructions of the IOC, in compliance with the B splitting procedure provided under Article 5.2.2.12.10 of the *International Standard for Laboratories*, by splitting the B sample into two bottles, in the presence of an independent witness, and resealing the second bottle.
7. The results of the analysis of the first bottle of the B sample (hereinafter referred to as “**A sample**”) have given rise to an adverse analytic finding: presence of recombinant erythropoietin (rEPO).
8. Pursuant to Article 6.2.1 of the *IOC Anti-Doping Rules applicable to the XXX Olympic Games in London, 2012* (hereinafter the “**Rules**”), Dr Richard Budgett (the “**IOC Medical Director**”), as representative of the Chairman of the IOC Medical Commission, was informed on 23 March 2015 by the Cologne Laboratory of an adverse analytical finding on the above-noted A sample of the Athlete.
9. Pursuant to Article 6.2.2 of the *Rules*, the IOC Medical Director determined that the above-noted A sample belonged to the Athlete, and verified that it did in fact give rise to an adverse analytical finding (i.e. that there was no therapeutic use exemption). He also determined that there was no apparent departure from the *International Standards for Testing* or the *International Standards for Laboratories* that undermined the validity of the adverse analytical finding.

10. Pursuant to Article 6.2.3 of the *Rules*, the IOC President, Thomas Bach, was informed of the existence of the adverse analytical finding and the essential details available concerning the case.
11. Pursuant to Article 6.2.5 of the *Rules*, the IOC President, by letter dated 30 March 2015, promptly set up a Disciplinary Commission, consisting of:
 - Denis Oswald (Chairperson)
 - Claudia Bokel
 - Gunilla Lindberg

The IOC President also informed the Disciplinary Commission that, pursuant to Rule 59.2.4 of the Olympic Charter and Article 6.1.6 of the *Rules*, the decision of the Disciplinary Commission would constitute the decision of the IOC.

The IOC President has in this case decided that the procedure may be extended beyond the 24-hour time-limit as per Article 6.2.14 of the *Rules*.

12. Pursuant to Article 6.2.6 of the *Rules*, by letter dated 1 April 2015, notified (by e-mail through the NOC of Ukraine) to the Athlete, to the Secretary General of the NOC of Ukraine and to the Secretary General of the Fédération Internationale de Natation (hereinafter "**FINA**"), the IOC President advised of the above-mentioned adverse analytical finding, the Athlete's right to request the analysis of the B sample and the right of the Athlete to be present or to be represented on these occasions, as well as the Athlete's right to request copies of the A and B sample laboratory package.
13. On 10 April 2015, by return e-mail, the Athlete returned the B confirmation form signed, indicating that she did not wish to have the B sample opened or analysed, nor did she wish to obtain the laboratory documentation package.
14. Pursuant to Article 6.2.7 of the *Rules*, by letter dated 13 April 2015, notified (by e-mail) to the Athlete, to the President of the NOC of Ukraine and to the Secretary General of the FINA, the IOC acknowledged that the Athlete had waived her right to the B opening and asked for the determination of the Athlete as to whether she would attend a hearing of the Disciplinary Commission and/or provide a defence in writing.
15. On 16 April 2015, by return e-mail, the Athlete notified the IOC that she did not wish to attend a hearing in person but would submit a defence in writing.
16. On 17 April 2015, by return e-mail, the Athlete submitted a written defence in which the Athlete states, in summary that:
 - She admits to having committed the anti-doping rule violation and accepts responsibility for her "fatal mistake";
 - She "accepts full responsibility" and "regret[s] that it happened";
 - She describes, in chronological order, her career as an athlete and more particularly as "one of the leading athletes in Ukrainian national team";
 - She confirms her understanding of what an anti-doping rule violation consists of and claims that for the duration of her sports career, she had "always [kept] straight" against taking prohibited substances and had always, through constant testing by different Anti-Doping Organisations, tested negative;
 - During the year 2011, she noticed that her general condition along with her sport results started decreasing and she did not want to miss her "last chance" to compete in the Olympic Games. She decided to use prohibited substances "somewhere near the end of June 2011";

- Being a “sports rehabilitation specialist” and with the support of information gathered on the internet, she was able to obtain “the substance” (NB : presumably rEPO);
 - She declares to be ready to participate in any anti-doping education or rehabilitation programs;
 - She requests the application of Article 10.2, Article 10.9.2 (timely admission) and Article 10.9 (commencement of ineligibility period) of the World Anti-Doping Code (2009 version).
17. On 19 May 2015, the IOC Disciplinary Commission sent the Athlete a number of additional questions surrounding the circumstances of her case.
18. On 21 May 2015, the Athlete provided the following answers:
- She had done a Google search for the word “Erythropoietin” and found that a medicine called “EPREX”, containing such substance, could be easily ordered online;
 - She did not remember exactly which online supplier she had used, but ordered from the cheapest available without needing a prescription;
 - The product EPREX was delivered to the Athlete’s home by courier, which, according to the Athlete, is a standard delivery channel for medication in the Athlete’s country;
 - Nobody else was aware that she was using a prohibited substance;
 - She did not have the product with her in London during the 2012 Olympic Games;
 - The substance was taken first mid June 2012 until end of July 2012, once a week (in accordance with the instructions included with the product);
 - She had never otherwise taken any other prohibited substance.
19. After reviewing the file, including the above-noted written statements from the Athlete, the Disciplinary Commission unanimously concluded that the Athlete had committed an anti-doping rule violation pursuant to Article 2.1 and/or 2.2 of the World Anti-Doping Code and Articles 2 and 13 of the *Rules* in that there was the presence of the prohibited substance, recombinant erythropoietin (rEPO), in her body.
20. The Disciplinary Commission notes that the Athlete has cooperated with the investigation and has answered to the written questions of the Disciplinary Commission in a diligent manner.
- The scope of decision of the IOC Disciplinary Commission in this case does not include the duration of ineligibility, which shall be determined by FINA.
- It shall therefore be the competence of FINA to determine the duration of ineligibility and other related consequences and conditions, including with respect to the arguments presented by the Athlete regarding application of Articles 10.2, 10.9 (10.9.2) of the World Anti-Doping Code (2009 Edition).
21. In view of the above, and pursuant to Article 7.1 and 8.1 of the *Rules*, the Disciplinary Commission decided that the Athlete is disqualified from the Women’s 10 km open water marathon event in which she participated at the London Olympic Games.

CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012 and in particular, Articles 1.2, 2, 7 and 8 thereof and pursuant to the World Anti-Doping Code and, in particular, Articles 2.1 and/or 2.2 and 10 thereof:

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Ms. Olga Beresnyeva, Ukraine, Swimming:
 - (i) is disqualified from the Women's 10 km open water marathon event of the Games of the XXX Olympiad in London in 2012, where she placed 7th;
 - (ii) is excluded from the Games of the XXX Olympiad in London in 2012;
 - (iii) shall have her diploma in the above event withdrawn.
- II. The Fédération Internationale de Natation (FINA) is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of Ukraine shall ensure full implementation of this decision.
- IV. This decision shall enter into force immediately.

Lausanne, 9 June 2015

The IOC Disciplinary Commission

Denis OSWALD
Chairman

Gunilla Lindberg

Claudia Bokel