

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY ALEX ROBICHAUD ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No: SDRCC DT 09-0105
(DOPING TRIBUNAL)

**CANADIAN CENTRE FOR ETHICS IN
SPORT ("CCES")**

FOOTBALL CANADA ("FC")

and

ALEX ROBICHAUD ("Athlete")

and

GOVERNMENT OF CANADA ("GC")

**WORLD ANTI-DOPING AGENCY
("WADA")
(Observers)**

REASONS

These Reasons follow the Decision of December 21, 2009 and are delivered as required by Rule 7.88(c) of the Doping Violations and Consequences Rules (the "Rules") of the Canadian Anti-Doping Program (the "CADP").

Hearing:

By telephone conference on Friday, December 18, 2009, at 3:00 p.m. (EST).

Preliminary Matters:

1. A preliminary meeting was held by conference call on December 1, 2009. The Parties agreed on dates for filing of Affidavits and written submissions, and to conduct the hearing by telephone conference.
2. CCES filed the Affidavit of Anne Brown on December 11, 2009.

3. The Athlete filed a letter dated December 7, 2009 on December 14, and on December 16, 2009, a typewritten note dated December 14, 2009 signed by [REDACTED].
4. CCES filed written submissions on December 16, 2009.

Evidence:

5. The evidence tendered by CCES is the Affidavit of Anne Brown sworn December 11, 2009 and the 12 exhibits attached thereto.
6. The Athlete's evidence consisted of his sworn oral testimony, his letter dated December 7, 2009 and the typewritten note dated December 14, 2009.

Facts:

7. FC adopted the CADP on December 10, 2008.
8. The purpose of the CADP is to protect the rights of athletes to fair competition and against the unethical practice of doping.
9. CCES is an independent, non-profit organization that promotes ethical conduct in all aspects of sport in Canada and maintains and carries out the CADP, including providing anti-doping services to FC and its members.
10. On October 3, 2009, the Athlete competed in an FC governed football game in Laval, QC, and was selected for in-competition doping control. He attended doping control and provided a urine sample (the "Sample") for testing as required. As a member of a team participating in an FC event, the Athlete was subject to the rules of the CADP.
11. The Sample was delivered for analysis to the WADA accredited laboratory in Montreal, QC.
12. On October 26, 2009, CCES received the Certificate of Analysis for the A - Sample from the laboratory. The Certificate attested to the presence of Cannabis metabolite in the Sample measured at 302 ng/ml(+/- 25 ng/ml) (the "Adverse Analytical Finding"). Cannabis above the threshold of 15 ng/ml is a Specified Substance as provided in the 2009 WADA List of Prohibited Substances (the "WADA List").
13. CCES commenced an initial review pursuant to Rule 7.63 of the Rules. The initial review determined that the Athlete had not been granted a Therapeutic Use Exemption relating to the use of Cannabis. Further, there was no apparent departure from the Doping Control Rules for the Sample collection, chain of custody and laboratory analysis procedures that might undermine the validity of the Adverse Analytical Finding.

14. As part of the initial review, CCES through FC asked the Athlete to provide an explanation for the Adverse Analytical Finding, but did not receive any response from the Athlete. On October 29, 2009, CCES closed the initial review and issued a Notice pursuant to Rule 7.66 of the Rules asserting that the Athlete had committed an anti-doping rule violation and proposing a sanction of 2 years ineligibility.
15. The Athlete exercised his right to have the B-Sample analysed. The Certificate of Analysis for the B-Sample attested to the presence of Cannabis metabolite measured at 292 ng/ml (+/- 24 ng/ml).
16. In his filed materials and during the hearing, the Athlete admitted the anti-doping rule violation, and that prior to October 3, 2009 he had smoked marijuana frequently, and during the evening of October 2, 2009.

Violation Finding:

17. CCES has met the burden of proof that the Athlete committed an anti-doping rule violation by reason of the detection of a Prohibited Substance, Cannabis metabolite, above the threshold of 15 ng/ml, in the in-competition Sample collected from the Athlete on October 3, 2009 pursuant to the Doping Control Rules of the CADP. This is the Athlete's first violation.

Penalty:

18. Rule 7.38 of the Rules specifies that the period of ineligibility shall be 2 years unless the Athlete satisfies the conditions in Rules 7.42 and 7.43 for elimination or reduction of the ineligibility period.
19. Rule 7.42 provides that where an athlete can establish how the substance entered his body and that such was not intended to enhance his sport performance or mask the use of performance enhancing substances, the period of ineligibility for a first violation shall be at minimum, a reprimand and no period of ineligibility, and at maximum, 2 years ineligibility.
20. The Athlete's evidence is that he smoked marijuana frequently during the 2009 football season and during the evening of October 2, 2009. CCES accepts the Athlete's explanation of how the Prohibited Substance entered his body.
21. The Athlete states that his use of marijuana was not intended to enhance his sport performance or mask his use of a performance enhancing substance.
22. The Athlete's evidence is that 2009 was a difficult year. His grandmother was diagnosed with Alzheimer's disease. His grandfather had been intermittently ill, but still able to live at home and care for his grandmother,

broke his hip and was hospitalized for 2 months. As a result, the Athlete helped move his grandmother into a nursing home. When discharged, his grandfather moved into the nursing home, but was re-hospitalized a short time later. During the year, the Athlete and his family had to move his grandparents at least twice. His grandfather died in late September, 2009. From January to May, 2009, the Athlete attended school full-time. He completed school in May. He worked during the summer and coached Atom level football and played football. When the Athlete started school again in August, he continued to work full-time, play football and coach on weekends.

23. The Athlete has been playing football since age 12 and due to injury has had 3 wrist surgeries. His evidence is that his wrists are frequently sore. Early in 2009 the Athlete would relieve stress by working out approximately 4 times per week. His summer/fall work, school, football and coaching commitments did not allow him sufficient time to exercise. The Athlete had previously smoked marijuana occasionally. He began smoking it more frequently because, "It simply helps me relax", and, "Never in my life thought that pot could be considered as a performance enhancement drug.... I would never be able to play good football if I was stoned at the game because my reflexes and attention span would not be up to par. My brain needs to be fully functioning when I play football. I cannot be on the field and not paying attention."
24. CCES and this Tribunal accept the Athlete's explanation that his use of marijuana was not intended to enhance his sport performance or mask his use of any performance enhancing substance.
25. Rule 7.43 provides that in order to justify any elimination or reduction of the first violation penalty, the Athlete must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the Tribunal the absence of an intent to enhance sport performance. The Athlete's December 7, 2009 letter is also signed by Susan Palmer and Jean Robichaud (his parents), Tyler Habberfield and Mike Walsh. Although none gave evidence, CCES and this Tribunal accept that the 4 signatories adopted the contents of Athlete's letter. During the hearing, the Athlete confirmed the truth of the statements in the letter. The December 14, 2009 note signed by [REDACTED] attests to having smoked marijuana with the Athlete the night prior to the doping control on October 3, 2009.
26. This corroboration of the Athlete's evidence establishes to the comfortable satisfaction of this Tribunal that in smoking marijuana, the Athlete did not have any intention to enhance his sport performance or mask the use of a performance enhancing substance. It was his method to deal with the stresses of his life.
27. In accepting that the Athlete has discharged the required onus and burden of proof

of Rules 7.42 and 7.43, a reduction of the mandated 2 year period of ineligibility is permissible. CCES submits that the penalty should be 3 to 4 months ineligibility.

28. To determine the appropriate penalty, the Prohibited Substance should be considered generally and in the context of the particular violation.
29. In small amounts, CCES states that marijuana has low to medium potential to enhance sport performance. Further, society accepts marijuana use as less serious than other Prohibited Substances. Full recognition must be given that possession and use of marijuana is both illegal at law and not condoned by society generally. Finally, the presence of a Specified Substance is prohibited for in-competition testing only, not out-of-competition testing. WADA therefore considers Cannabis to be less serious than other Prohibited Substances.
30. CCES submits that sanctions imposed for Cannabis use violations should be short to medium periods of ineligibility.
31. In this matter, the sample analyses of 302 ng/ml and 292 ng/ml are high in relation to the threshold level of 15 ng/ml. These levels confirm the prolonged or frequent use of marijuana admitted by the Athlete.
32. The Athlete acknowledges his frequent use of marijuana was voluntary and deliberate, without peer pressure or accidental ingestion. Further, he knew that use and possession of marijuana is illegal and that marijuana is a Prohibited Substance on the WADA List.
33. The Athlete's school, work, sport and coaching participation are favourable factors which may explain his personal stresses, but do not justify his use of marijuana.
34. Finally, CCES submits that the factors in this matter do not warrant a reprimand only. It is necessary to demonstrate to the sport community that the use of marijuana by sport participants is not acceptable.
35. The 2009 International Rugby Board Judicial Committee decision in Chvihivivadze noted the preface to the World Anti-Doping Code (2009) which states the purpose of anti-doping programs as follows:

Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as "the spirit of sport", it is the essence of Olympism; it is how we play true. The spirit of sport is the celebration of human spirit, body and mind and is characterized by the following values:

- Ethics, fair play and honesty
- Health
- Excellence in performance
- Character and education

- Fun and joy
- Teamwork
- Dedication and commitment
- Respect for rules and laws
- Respect for self and other participants
- Courage
- Community and solidarity

Doping is fundamentally contrary to the spirit of sport.

36. The Athlete states that he has learned a difficult lesson and truly regrets his actions. He is worried that any sanction other than a reprimand will result in publication of the Decision and these Reasons and may have future adverse consequences for him.
37. A reprimand must be restricted to anti-doping rule violations that result from the most minor and perhaps innocent of circumstances. Such is not the case in this matter. The Athlete's sanction must be proportional to his relatively significant degree of fault.

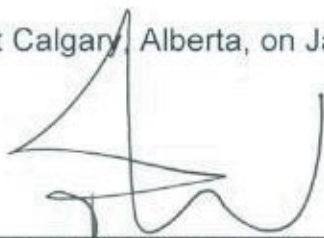
Penalty Finding:

38. The Athlete was not provisionally suspended by FC.
39. The period of ineligibility is 4 months commencing December 21, 2009.

Costs:

40. There were no submissions regarding costs. Accordingly, each party shall bear its own costs of the proceeding.

DATED at Calgary, Alberta, on January 4, 2010.



JOHN WELBOURN, Arbitrator