SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

Nº: SDRCC DT 15-0233
(Doping Tribunal)

Between:

CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)
ATHLETICS CANADA (AC)

– and –

DUSHANE FARRIER

Athlete

– and –

GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)

Observers

Tribunal : Patrice Brunet (Sole Arbitrator)

Date of Hearing: January 19th, 2016

Appearing:

For CCES: Alexandre Maltas, Lindsay Williams, Kevin Bean

For AC: Corey Dempsey

For the Athlete: Self-represented

REASONS FOR DECISION

OVERVIEW

1. On July 3rd, 2015, the Athlete was subject to a doping control at the Canadian Track and Field Championships in Edmonton, Alberta.

2. The analysis of the Athlete's sample indicated the presence of SARM S-22, an anabolic agent classified as a Prohibited Substance (Anabolic Agents) on the 2015 World-Anti Doping Agency Prohibited List.

3. The adverse analytical finding was received by the CCES from the World Anti-Doping Agency ("WADA") accredited laboratory on July 12th, 2015.

4. On July 15th, 2015, in accordance with Rule 7.3.1 of the *Canadian Anti-Doping Program* ("CADP"), the CCES issued a *Notification of Adverse Analytical Finding*. Paragraphs 1 and 2 of this Notification outline the following facts:

> *The Canadian Centre for Ethics in Sport (CCES) asserts that Mr. Dushane Farrier, an athlete affiliated with Athletics Canada, has committed an anti-doping rule violation. The sample giving rise to the adverse analytical finding was collected in-competition on July 3, 2015 in Edmonton, AB, in accordance with the Doping Control Rules of the CADP. The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory on July 12, 2015.*

5. On July 16th, 2015, an administrative conference call was held between the SDRCC and the Parties to explain the upcoming procedures. During the call, it was noted that the CCES had imposed a provisional suspension on the Athlete. The Resolution Facilitation (RF) process for doping cases was also discussed.

6. On August 14th, 2015, the legal counsel for the Athlete at the time sent an email to the Tribunal stating the following: "*Where [sic] are informing you that* ***the athlete have*** *[sic]* ***just signed a prompt admission form and notified it to the CCES.*** *We will provide the CCES with the athlete's representations in favor of a sanction reduction". (Emphasis added)*

7. On August 15th, 2015, the Athlete signed a Prompt Admission of an Anti-Doping Rule Violation form, in accordance with Rule 10.6.3 of the CADP.

8. By signing this form, the Athlete voluntarily admitted to the violation that had been asserted by the CCES in its *Notification of Adverse Analytical Finding* and also confirmed that he would not, at any time in the future, contest the fact of this violation.

9. According to the CCES' submissions, on August 27th, 2015, the CCES sought a reduced sanction (below 4 years) for the Athlete from WADA on the basis of the Prompt Admission form and the Athlete's written submissions. WADA wrote to the CCES on August 28th, 2015, and declined to provide the Athlete with a reduction in sanction.

10. According to the CCES' submissions, on August 28th, 2015, the CCES informed the Athlete that WADA did not agree to a reduction of his sanction from the four (4) year period of ineligibility asserted in the CCES Notification dated July 15th, 2015.

11. On September 17th, 2015, the Athlete's counsel sent an email to the Tribunal stating the following: *"We went [sic] to inform you that after going through a prompt admission form process with the CCES, the athlete wants to contest the proposed sanction through an arbitration and at the same time refuses the absence of a sanction's reduction resulting from the answer of the CCES."* However, no formal request for a hearing was filed by the Athlete at that time.

12. In the same email, the Athlete's counsel also informed the Tribunal that he was withdrawing as the athlete's lawyer.

13. On September 23rd, 2015, the CCES informed the Athlete that it was amending its Notification sent on July 15th, 2015, in order to reset the 30-day period for the Athlete to decide to actively engage in the SDRCC hearing process (as of September 17th, 2015). The CCES also suggested that the Athlete seek legal counsel to assist him in this process.

14. On October 15th, 2015**,** the Athlete filed the **"**Request for a Hearing – Doping" Form with the SDRCC.

15. On October 20th, 2015, the CCES filed the "Answer – Doping" Form with the SDRCC.

16. On October 20th, 2015**,** the undersigned was appointed as Arbitrator.

17. On November 4th, 2015, a preliminary conference call was held between the Arbitrator and the Parties to address preliminary matters and plan the next steps in the proceedings. The Athlete informed the Parties that he was still seeking legal representation. Given these circumstances, the undersigned Arbitrator indicated that it was prudent to refrain from addressing preliminary matters until such time as a legal representative was appointed by the Athlete. A second preliminary conference call meeting was set for November 18th, 2015, as the Athlete confirmed he should have retained legal counsel by that date.

18. On November 17th, 2015, the Athlete wrote to the Tribunal: "*I've been having some complications in getting a lawyer to represent with my case. Is there any way, the preliminary case can be pushed back a few days.*"

19. The undersigned Arbitrator agreed to further postpone the second preliminary conference call meeting to November 25th, 2015. During the call held on that day, the

undersigned Arbitrator asked the Athlete whether he had successfully retained legal counsel since their last meeting. The Athlete confirmed that he had found counsel, and that he would be available on November 30th, 2015, as he was finalizing discussions with him. Respecting solicitor-client privilege principles, the undersigned Arbitrator refrained from exploring the identity of the proposed counsel, as retainer details did not seem to have been finalized. I ordered that the preliminary meeting be further postponed to November 30th, 2015.

20. On November 30th, 2015, the third preliminary meeting was held. The Athlete informed the undersigned Arbitrator and the CCES that he had not found legal counsel, but that he was ready to proceed.

21. I explained the arbitration process and informed the Athlete that it would be advisable for him to become as familiar as possible with the CADP, the Canadian Sport Dispute Resolution Code, and more particularly the section pertaining to doping infractions, the SDRCC website pertaining to similar jurisprudence that may apply to his situation, and not to hesitate to contact the SDRCC staff in case he had any questions with respect to procedure.

22. The legal representative of the CCES asked the Athlete whether he was considering contesting the sanction or the violation, given the fact that he had signed a Prompt Admission form. The Athlete indicated that he was considering contesting both the sanction and the violation.

23. At the end of the meeting, a timetable for submissions was set. Considering that the Athlete was considering contesting the violation, I determined it to be fair that the Athlete would present his submissions first. The following schedule was ordered:

    - **December 14th, 2015 at 4:00 p.m. (EST):** Submissions by the Athlete. If applicable, a list of witnesses should be provided with a short statement of what each of them will be proffering.

- **December 21st, 2015 at 4:00 p.m. (EST):** Submissions by the CCES which should also include a list of witnesses and a short statement of what they will be proffering.
- **January 6th, 2016 at 4:00 p.m. (EST):** Reply submissions by the Athlete.
- **January 19th, 2016 at 9:30 a.m. (EST):** In-person hearing in Toronto. The location would be confirmed later by the SDRCC.

24. On December 15th, 2015, one day after the deadline, the Athlete submitted the following statement:

> *I'm contesting this sanction for numerous reasons. However I feel there is [sic] no guarantees, about myself giving more details about my current situation. I devoted a lot of information to my previous lawyer and the SDRCC about me taking "sarms" which was clearly misinterpreted. As I stated before, a 4-year sanction is taking away an athletes [sic] youth in this sport and forces them [sic] to retire. If there is no guarantee that I can have a lesser sanction my statement will remain "I took something that was legal, but I had no idea it was illegal till [sic] I tested positive. I had no idea what ingredients was [sic] in it, I plead negligence to the fact that it was illegal.*

25. The CCES filed their submissions on the deadline of December 21st, 2015.

26. In particular, the CCES submitted the following:

> […] *the Athlete's admission should be given effect. He has given no reason why it should be set aside, despite direction to do so in his submissions by the Arbitrator. If the Arbitrator does not take the Athlete's admission of the anti-doping violation as proof of the violation, then there is ample proof of the violation in the form of the Certificate of Analysis and the Athlete's own evidence.*

27. Through the same correspondence, the CCES requested another preliminary conference call to discuss the issue of admission and be provided with direction from the undersigned Arbitrator, in order to gain clarity regarding its submissions and preparation for the hearing.

28. On December 22nd, 2015, the SDRCC sent the following message to all Parties:

> *Further to the request by the CCES to convene another preliminary conference call, the Arbitrator has given the following availabilities: December 22, 2015 – all afternoon; December 23, 2015 – until 3:00 p.m. (EST). The anticipated duration of the preliminary meeting is approximately one hour. Please indicate by return email to the Tribunal, before 1:00 p.m. (EST) on December 22, 2015 any time at which you are NOT available during the proposed dates/times.*

29. The Athlete did not respond by the deadline. On December 23rd, 2015, the undersigned Arbitrator requested that the Athlete respond to the Tribunal by 4 p.m. (EST) on the same day. The undersigned Arbitrator also indicated that "*in the absence of [a] response, the Tribunal will consider issuing a Procedural Order*."

30. The Athlete did not respond by the deadline. Given the absence of a response, I issued a Procedural Order on December 24th, 2015.

31. The Procedural Order contained the following conclusions:

> ***[…] Considering that the Athlete has not responded,*** *the Tribunal considers appropriate to issue this Procedural Order, and;*
>
> ***Considering that the Athlete has admitted in writing to the violation*** *on more than one occasion, while being represented by legal counsel;*
>
> ***The Tribunal rules that the Athlete has effectively admitted to a***

doping violation as detailed in the notification letter of July 15, 2015.

The procedural calendar as previously ordered remains unchanged.

32. On December 30th, 2015, the Athlete informed the Tribunal by email of the following: *"I lost my phone last week. And I wasn't able to recover it. So I had no way of contacting [sic] tribunal. I got [sic] new phone over the holidays. My apologies for the headache."*

33. On January 6th, 2016, Catherine Pitre of the SDRCC communicated by email with the Athlete to verify if he had the intention to make reply submissions:

> *Dear Mr. Farrier,*
> *Did you intend to make Reply Submissions in this case?*
> *I am asking because a deadline of January 6th, 2016 at 4 p.m. (EST) had been set during the Conference Call of November 30th, 2015.*
> *An in-person hearing in Toronto was also set for January 19th, 2016 at 9:30 a.m. during this Call.*

34. The Athlete responded the same day, stating the following:

> *"Hello*
>
> *Yes, I did. Everything in the case file, that was said looks to be in order."*

35. Consequently, the Athlete did not file any reply submission.

36. On January 7th, 2016, Mr. Alexandre Maltas, counsel for the CCES, wrote an email to the Tribunal to request that the CCES be excused from attending in person the hearing set for January 19th, 2016 in Toronto, and to allow their participation via either video conference or teleconference.

37. This request was primarily based on budgetary reasons. According to Mr. Maltas, participating remotely would result in considerable cost savings for the CCES, while still affording the athlete his right to an in-person hearing before the Arbitrator.

38. The Athlete raised no objection regarding this request.

39. On January 7th, 2016, I granted the CCES' request to participate in the hearing via video conference or teleconference.

40. On January 19th, 2016, the hearing took place at Arbitration Place, in Toronto. For practical reasons, the hearing start time was postponed from 10 a.m. to 1 p.m., with no objection from any of the Parties.

41. Appearing for the CCES, by teleconference were Alexandre Maltas, Lindsay Williams and Kevin Bean, and appearing for Athletics Canada was Corey Dempsey. Present in-person were the Athlete, the undersigned Arbitrator, and Catherine Pitre, Case Manager for the SDRCC.

THE PARTIES

42. The CCES is an independent, not-for-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the CADP, including the provision of anti-doping services to national sport organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code and its mandatory International Standards. The CCES has implemented the World Anti-Doping Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the Code and of the CADP is to provide protection of the right of athletes to fair competition.

43. AC is the national governing body of the sport of athletics in Canada, which includes track and field, combined events, cross-country running, road racing, race walking, and para-athletics. Its purpose is the pursuit of leadership, development and competition that ensures world-level performance in athletics. Athletics Canada is a member of the International Association of Athletics Federations (IAAF) and the International Olympic Committee (IOC).

44. Mr. Dushane Farrier is a 26 year-old elite level sprinter. He was named to Athletics Canada's PanAm Games team on June 16th, 2015 and competed in the United States in National Collegiate Athletic Association ("NCAA") track competitions for three (3) years prior to being named to the AC *NextGen* program in January 2015, the Canadian track and field high performance development team.

JURISDICTION

45. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19th, 2003[1].

46. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sport community, among others, a national alternative dispute resolution service for sport disputes.

47. In 2004, the SDRCC assumed responsibility for doping disputes in Canada.

48. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.

SUBMISSIONS

[1] The *Physical Activity and Sport Act*, S.C. 2003, c.2

Submissions of the CCES

49. The CCES submits that there is no basis for reducing the mandated four-year period of ineligibility provided by Rule 10.2.1.1 of the CADP.

50. Specifically, the CCES submits that:

> *(a) The Athlete intentionally took SARM S-22 and does not dispute it. He took it to aid in the recovery of a groin injury. He argues that he did not know that it was a prohibited substance, but lack of knowledge is not an excuse. The Athlete is an elite athlete who knew or ought to have known about his anti-doping obligations under WADA, the CADP and the Rules.*
>
> *(b) The Athlete argues that he did not take the Anabolic Agent for the purpose of performance gains. Performance gains are not a relevant factor in determining intention, and even if they were, the Athlete took SARM S-22 for the purpose of healing his groin so he could better compete, which would equate to performance gains.*
>
> *(c) A reduction in sanction below 2 years of ineligibility (potentially available pursuant to Rule 10.5.2) is not available unless and until the Athlete is able to prove "no intention" and that Rule 10.2.1 does not apply.*
>
> *(d) Even if the Athlete is able to prove "no intention" so the sanction is presumptively set at 2 years instead of 4 years, CCES submits that the Athlete cannot meet the test for reducing his sanction below 2 years under Rule 10.5.2. Simply put, the Athlete has failed to demonstrate that he took any reasonable precautions prior to taking the substance allegedly responsible for the adverse analytical finding. In this regard he was significantly at fault and*

negligent.

51. Finally, the CCES states that the four-year sanction should run from the date of the sample collection, which took place on July 3rd, 2015.

Submissions of the Athlete

52. On December 15th, 2015, the Athlete presented his submissions to the Tribunal. Prior to the hearing, the written submissions were contained in a one-page document, stating the following:

> *Dushane Farrier*
>
> *Legal document*
>
> *I'm contesting this sanction for numerous reasons. However I feel there is [sic] no guarantees, about myself giving more details about my current situation.*
>
> *I devoted a lot of information to my previous lawyer and the SDRCC about me taking "sarms" which was clearly misinterpreted. As I stated before, a 4-year sanction is taking away an athletes [sic] youth in this sport and forces them [sic] to retire. If there is no guarantee that I can have a lesser sanction my statement will remain "I took something that was legal, but I had no idea it was illegal till [sic] I tested positive. I had no idea what ingredients was [sic] in it, I plead negligence to the fact that it was illegal.*

53. Therefore, the Athlete is seeking a reduction of the 4-year sanction that he is facing, without further specifying the request. However, at the hearing, the Athlete requested that his sanction be reduced to a 2-year suspension.

THE APPLICABLE RULES

54. The Canadian Anti-Doping Program (the "CADP") is largely based on the World Anti-Doping Code ("the Code").

55. Under Rule 1.3 of the CADP, Athletes and other Persons accept the CADP as a condition of participating in sport and shall be bound by the rules contained in the Code and the CADP.

56. An athlete is defined in the CADP definitions (Appendix I) as someone who competes in sport at the international level or the national level. Mr. Farrier is an individual who fits this description, therefore he is bound by the CADP and there were no objections to this effect.

57. Rule 2.1 of the CADP states:

> **2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample**
>
> 2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters 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 not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 2.1.
>
> *(Emphasis added)*
>
> *[Comment to Rule 2.1.1: An anti-doping rule violation is committed under this Rule without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Rule 10. This principle has consistently been upheld by CAS.]*
>
> 2.1.2 Sufficient proof of an anti-doping rule violation under Rule

2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

58. Rule 4.2.2 of the CADP provides information regarding Specified Substances:

> *4.2.2 Specified Substances*
>
> For the purposes of the application of Rule 10, all Prohibited Substances shall be Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List.
>
> […]
>
> *(Emphasis added)*

59. Given that SARM S-22 is part of the "Anabolic Agents" category, it is therefore not a Specified Substance in application of Rule 10 of the CADP.

60. Rule 10.2 of the CADP sets out the sanction associated with a violation of Rule 2.1:

> **10.2 *Ineligibility* for Presence, *Use* or *Attempted Use*, or *Possession* of a *Prohibited Substance* or *Prohibited Method***
>
> The period of Ineligibility for a violation of Rules 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Rules 10.4, 10.5 or 10.6:
>
> 10.2.1 The **period of *Ineligibility* shall be four years where**:
>
> 10.2.1.1 **The anti-doping rule violation does not involve a *Specified Substance*, unless the *Athlete* or**

other *Person* can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a *Specified Substance* and CCES can establish that the anti-doping rule violation was intentional.

10.2.2 If Rule 10.2.1 does not apply, the period of *Ineligibility* shall be two years.

10.2.3 As used in Rules 10.2 and 10.3, the term "intentional" is meant to identify those *Athletes* who cheat. The term, therefore, requires that the *Athlete* or other *Person* engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall be rebuttably presumed to be not "intentional" if the substance is a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition*. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall not be considered "intentional" if the substance is not a *Specified Substance* and the *Athlete* can establish that the *Prohibited Substance* was *Used Out-of-Competition* in a context unrelated to sport performance.

(Emphasis added)

61. Rule 10.5.2 of the CADP specifies the following:

10.5 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence*

[…]

10.5.2 Application of *No Significant Fault or Negligence* Beyond the Application of Rule 10.5.1

If an *Athlete* or other *Person* establishes in an individual case

> where Rule 10.5.1 is not applicable, that he or she bears *No Significant Fault or Negligence*, then, subject to further reduction or elimination as provided in Rule 10.6, the otherwise applicable period of *Ineligibility* may be reduced based on the *Athlete* or other *Person*'s degree of *Fault*, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Rule may be no less than eight years.

(Emphasis added)

DISCUSSION

62. This is yet another unfortunate case where a sympathetic and promising athlete is careless in the ingestion of a prohibited substance.

63. Through his previous counsel, written representations and admissions, as well as his testimony before myself, the Athlete has admitted to the doping violation.

64. After he ceased being represented by counsel, he questioned whether he should have admitted to the doping violation, as his goal was to obtain a reduction of his sanction from a four-year suspension to a two-year suspension. This was confirmed verbally during the hearing.

65. Under Rule 10.6.3 of the CADP, a reduction of sanction can only be entertained if there is an admission of the doping violation.

66. In the presence of written admissions from the Athlete's counsel, and in order to provide the CCES with a sense of direction for the upcoming hearing, I issued the Procedural Order of December 24th, 2015, and confirmed the doping violation as a matter of an admission of fact by the Athlete.

67. The CADP is written in such a way as to structure banned substances in two (2) general types of categories. All substances appearing on the WADA Prohibited List

are *Prohibited Substances*. They represent the most egregious substances related to doping in sport, such as anabolic steroids and growth hormones (SARM S-22 is an anabolic steroid).

68. However, throughout the years, the Code (and by adaptation the CADP) has evolved to recognize that some substances may not have the same egregious effect in doping in sport. Therefore, some flexibility needed to be built in to sanction athletes caught using them, in a more comprehensive manner. Those substances are called *Specified Substances* and include, for instance, Salbutamol, which may be regularly used by asthmatic athletes, while respecting certain conditions and clinical analysis thresholds.

69. Because SARM S-22 is a *Prohibited Substance*, without the additional label of being a *Specified Substance*, it does not benefit from the built-in flexibility that would be attributed to my scope of review, contained in Rule 10.5.1.1 of the CADP:

> 10.5.1.1 Specified Substances
>
> Where the anti-doping rule violation involves a *Specified Substance*, and the *Athlete* or other *Person* can establish *No Significant Fault or Negligence*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two years of *Ineligibility*, depending on the *Athlete*'s or other *Person*'s degree of *Fault*.

70. I am therefore bound to limit the scope of my analysis to Rule 10.2.1 of the CADP, which reads as follows:

> 10.2.1 The period of *Ineligibility* shall be four years where:
>
> > 10.2.1.1 The anti-doping rule violation does not involve a *Specified Substance*, unless the *Athlete* or other *Person* can establish that the anti-doping rule violation was not intentional.
>
> […]

71. So the scope of review that I am required to apply, under the CADP, is limited to the

intentionality of the violation.

72. The Athlete was candid in his representations, both written and testimonial, in establishing that he did not *intend* to ingest a *Prohibited Substance.*

73. In fact, he was not aware that the substance was prohibited, therefore he maintains that he could not have ingested it intentionally, if he did not know it was prohibited.

74. Rule 10.2.3 defines what is "intentional":

> 10.2.3 As used in Rules 10.2 and 10.3, the term "intentional" is meant to identify those *Athletes* who cheat. The term, therefore, requires that the *Athlete* or other *Person* engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a **significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk**. […]
>
> *(Emphasis added)*

75. In order to establish whether the ingestion of the SARM S-22 was unintentional, I need to rely on the facts before me, and establish on a balance of probabilities whether the Athlete knew, at the time of ingestion, that there was a significant risk that the ingestion may result in an anti-doping infraction and manifestly disregarded that risk.

76. I will therefore deconstruct the facts before me in two (2) parts: the analysis of the significant risk, and the manifest disregard of the risk on the part of the Athlete.

Was there a significant risk that the ingestion may result in an anti-doping infraction?

77. As the Athlete's submissions were not particularly developed, I began the hearing by exploring the facts with the Athlete as his own witness.

78. The Athlete developed a groin injury in May 2015.

79. One of his friends named “Amir” suggested that he take a product from an unlabeled bottle.

80. The Athlete ignored what was Amir’s last name.

81. The bottle was described by the Athlete as a “small, dark blue bottle”. He was to take two (2) drops on his tongue, on two (2) occasions.

82. The Athlete asked Amir what it was, and whether it was a legal product. Amir said it was called “Ostarine” and that it was not a banned substance.

83. The WADA Prohibited List lists “Ostarine” by name as a prohibited anabolic agent in its 2015 list, however the 2014 only lists “SARMs”. In this case, the 2015 list was in effect, being the year of collection of the sample.

84. The Athlete alleges that he looked at the wrong list (the 2014 list) and could not find the substance listed. Therefore, he trusted his friend’s reassurance that it was not a banned substance, and he was comforted with the fact that he did not find the product listed on the WADA Prohibited List, although he admits having consulted the previous year’s list.

85. The Athlete questioned the provider, he questioned him on the nature of the substance and was aware that he needed to comply with anti-doping rules.

86. Based on these admissions, I am satisfied that the Athlete was aware, at the time of ingestion, that there was a *significant risk* that the ingestion may result in a doping infraction.

87. This then brings me to the second test of Rule 10.2.3.

Did the Athlete manifestly disregard the risk?

88. The conduct of the Athlete then is important to determine whether he made all the appropriate verifications to ensure the substance was not on the WADA Prohibited

List.

89. Although the Athlete was recently named to the Canadian *NextGen* program and submitted not to have received sufficient information on the danger of ingesting Prohibited Substances, he previously comes from the NCAA program of the University of Alabama. The NCAA applies the World Anti-Doping Code, through the United States Anti-Doping Agency (USADA).

90. It has not been served as evidence whether the NCAA, Athletics Canada or the CCES have provided sufficient information to the Athlete about the dangers of doping in sport. However, his questions to Amir satisfy me that he was sufficiently aware of the perils of taking products that may be on the Prohibited List.

91. All athletes subject to doping tests must develop a high awareness of the products that they ingest, particularly those that pretend to have a curative purpose.

92. I question the Athlete's testimony with respect to his investigation of the 2014 WADA Prohibited List, prior to taking the SARM S-22. Assuming that, in fact, he consulted the list, it is difficult to imagine that he consulted it in the presence of Amir, and before ingesting the product.

93. Based on what I have heard, I believe he consulted the list, after having consumed the product, whether before or after receiving the *Notification of Adverse Analytical Finding*. In any case, as he consulted the wrong list, not only did he have a duty to ensure the list was the correct one, but the 2014 WADA Prohibited List did include SARMs as anabolic agents.

94. It was testified by the Athlete that he did not take the Prohibited Substance to enhance performance, but to heal his groin. Nevertheless, this is not a legitimate excuse.

95. Pursuing my analysis to determine whether the Athlete *manifestly disregarded the risk*, I need to explore whether there were other opportunities for him to verify the compliance of the product with the anti-doping rules.

96. On his Doping Control form, the Athlete lists the name of his coach and his doctor.

97. When cross-examined by the CCES' counsel, the Athlete replied that he did not ask either of them whether "Ostarine" was a legitimate product to be taken.

98. Also, the CCES has a telephone number that the athletes may access at any time. Predictably, if the Athlete had dialed the number and asked a question regarding "Ostarine", the CCES staff would have confirmed that the product is a Prohibited Substance. Nothing in the evidence suggested that the Athlete considered calling the CCES to ask the question.

99. Finally, a simple Google search typing "Ostarine" returns top results including the words "SARM" or "SARMS", which are both on the 2014 and the 2015 WADA Prohibited List.

100. I understand that the Athlete questioned whether the product he was taking, or about to take, could be on the WADA Prohibited List.

101. However, the evidence shows that:

a) The product he was provided came from "Amir", whose last name he did not know.

b) The product came in an unlabeled, small dark blue bottle.

c) When the Athlete consulted the (wrong) WADA Prohibited List, he did not find "Ostarine".

102. This, based on the evidence before me, was the extent of the Athlete's verifications regarding the legality of the product he was about to ingest, or had already ingested.

103. When analyzing whether the Athlete *manifestly disregarded the risk*, I need to determine, on a balance of probabilities, based on the evidence before me, that the Athlete understood the risk, and acted in such a way that he did not make the appropriate verifications to recognize this risk, and therefore limit or eliminate it.

104. If those steps to limit or eliminate the risk are not taken, which appear to be

reasonable to an Elite level, adult, 26-year old athlete, then I cannot but conclude that said Athlete *manifestly disregarded the risk* associated with the ingestion of the *Prohibited Substance*.

105. In this instance, and based on the evidence before me, I am satisfied that the Athlete has manifestly disregarded the risk, in taking Ostarine, which is SARM S-22, an anabolic steroid.

106. As stated earlier, the Athlete may escape the application of the four-year period of ineligibility of Rule 10.2.1, if he can convince the Tribunal that the anti-doping rule violation was not *intentional*.

107. *Intentionality* is further defined in Rule 10.2.3 of the CADP, and needs to meet a twofold test: that the Athlete knew there was significant risk in that conduct, and that he manifestly disregarded that risk.

108. Based on the evidence before me, I am both satisfied that the Athlete was aware that there was a significant risk in taking the product, and that he manifestly disregarded the risk, by not furthering his investigation through questions to his coach, his doctor or the CCES directly.

109. Therefore, since the Athlete failed to convince this Tribunal that the anti-doping rule violation was not intentional, the period of ineligibility of four (4) years stated in Rule 10.2.1 takes full effect.

110. Rule 10.11.2 of the CADP states:

> 10.11.2 Timely Admission
>
> Where the *Athlete* or other *Person* promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by CCES, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. […]

111. Since the Athlete promptly admitted to the anti-doping rule violation, and as suggested by the CCES, the period of suspension starts as of the date of collection of the sample, being July 3rd, 2015.

DECISION

Dushane Farrier has committed an anti-doping rule violation, under Rule 2.1 of the Canadian Anti-Doping Program.

There is no reason to reduce the period of ineligibility under Rule 10.2.1.1 of the CADP.

Therefore, Mr. Farrier is ineligible for a period of four (4) years, commencing retroactively on July 3rd, 2015, and ending on July 2nd, 2019.

I retain jurisdiction and reserve the right to hear any dispute relating to the interpretation or application of the present decision.

Signed in Montreal on January 25th, 2016

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Patrice Brunet, Arbitrator