

Decision of the Japan Anti-Doping Disciplinary Panel

Name of Athlete: X  
Sport: Volleyball

Pursuant to the decision of the Hearing Panel convened for Case 2014-008, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

February 18, 2015  
Japan Anti-Doping Disciplinary Panel  
Chair: Toshio Asami

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Case 2014-008: Hearing Panel Decision

The Hearing Panel for Case 2014-008, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 8.3.2 of the Japan Anti-Doping Code (the “Japan Anti-Doping Code” as referred to herein means the Japan Anti-Doping Code of February 23, 2009, Version 2.0; hereinafter, the “Code”), has made the following decision concerning this case pursuant to the results of the hearing (the “Hearing”) held on February 10, 2015.

February 18, 2015  
Kazuki Shishido \_\_\_\_\_  
Toshio Asami \_\_\_\_\_  
Noboru Mesaki \_\_\_\_\_

Decision:

- A violation of Article 2.1 of the Code is found to have occurred.
- In accordance with Article 10.1.1 of the Code, subject to the decision of the Japan Volleyball Association, the individual results obtained in the 2014 ALL JAPAN VOLLEYBALL CHAMPIONSHIPS shall be disqualified, and consequences shall be imposed including the forfeiture of all medals, points and awards acquired during in such event.
- In accordance with Articles 10.4, 10.9.1 and 10.9.2 of the Code, ineligibility shall be imposed for a period of two months starting from January 7, 2015.

Reasons:

- While the new Japan Anti-Doping Code has been in effect since January 1, 2015, Article 25.7 of said code sets forth that said code shall not apply retroactively to matters pending before the effective date of January 1, 2015. In this case, although the notice of provisional suspension was sent on January 7, 2015, sample collection from the Athlete and the subsequent result of testing positive was conducted within 2014; therefore, the Code applies to this case.
- The substance “tulobuterol” that was detected from the Athlete in in-competition testing conducted on December 13, 2014 is designated as a prohibited substance under “S3. Beta-2 Agonists” in The 2014 Prohibited List International Standard (the “Prohibited List”), and it constitutes a “prohibited substance” as prescribed in Article 2.1 of the Code. In response to this, the Athlete neither requested an analysis of the B Sample, nor contested the test results or the process and procedure that led to those results at the provisional hearing or the hearing.
- Accordingly, the Athlete can be found to have violated Article 2.1 of the Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) in this case, and it is appropriate to consider that, in accordance with Article 10.1.1 of the Code, subject to the decision of the Japan Volleyball Association, the individual results obtained in the 2014 ALL JAPAN VOLLEYBALL CHAMPIONSHIPS shall be disqualified, and consequences shall be imposed including the forfeiture of all medals, points and awards acquired during in such event.
- Furthermore, the substance above that was detected in this case, while on the one hand constituting a “prohibited substance,” also is a “specified substance” under the Prohibited List. Based on the testimonies of Japan Anti-Doping Agency (“JADA”), the Athlete herself, the coach of the women’s volleyball club to which the Athlete belongs named Y, and the documents submitted by the Athlete (the written explanation of the Athlete herself, the statement titled “Apology Letter” by Y, the medical certificate and written explanation prepared by the Athlete’s primary care doctor, etc.), the documents submitted by JADA (the Doping Control Form, etc.) as well as the entire purport of the Hearing, the following facts can be found.
  - (1) It can reasonably be assumed that the tulobuterol that was detected in this case was prescribed, on December 10, 2014 to the Athlete who was diagnosed as having asthmatic bronchitis and cough variant asthma by the Athlete’s primary care doctor (the doctor from whom the Athlete had been receiving medical treatment since previously upon the introduction of the women’s volleyball club to which the Athlete belonged), and was contained in the “Hokunalin pill” which the Athlete took on and after said date.
  - (2) The Athlete claims that she took the “Hokunalin pill” above for the purposes of alleviating her symptoms of asthmatic bronchitis and cough variant asthma. Such claim of the Athlete is also supported by the medical certificate prepared by the doctor above and written evidences such as the past prescription history of other medicine for asthmatic bronchitis and cough variant asthma, and no contrary evidence can be found in particular. Therefore, the Athlete’s use of such substance in this case can be found to have been for

the purposes of cure of asthmatic bronchitis and cough variant asthma and not for enhancing sport performance.

- (3) While the “Hokunalin pill” taken by the Athlete in this case was prescribed by such primary care doctor, the Athlete can be seen to have taken endeavors to avoid the use of prohibited substances, such as by taking efforts to receive prescription of medicine not containing prohibited substances by clarifying, upon receiving medical treatment by such primary care doctor, that she was an athlete possibly subject to a doping test, and such as by making an inquiry, after being prescribed with medicine, towards the team trainer regarding the medicine which she was capable of taking, pursuant to the guidance of the women’s volleyball club to which the Athlete belonged. However, such primary care doctor was not delegated with work as a team doctor for the women’s volleyball club to which the Athlete belonged, nor did he explicitly enter into an employment or services agreement with such club, and no fact can be found for such doctor to have received special training regarding the anti-doping rules or prohibited substances by the Japan Volleyball Association. In addition, the opinion of the team trainer who separately confirmed the use of the medicine taken by the Athlete was not necessarily based upon sufficient knowledge and experience regarding anti-doping, and it cannot also be denied that the circumstances enabled the Athlete to have been aware of the situations above. Furthermore, no sufficient evidence can be found to recognize that the Athlete, upon confirming with the team trainer, explicitly requested for confirmation upon informing the names of each individual medicine prescribed by such primary care doctor, and it is unavoidable to find the Athlete to have been negligent in that she cannot be said to have been completely following the guidance of the women’s volleyball club to which she belonged.
  - (4) The responsibility to ensure that no prohibited substance enters into an athlete’s body ultimately falls on the athlete himself/herself, and it must unavoidably be said that the selection of a reliable doctor in the context of anti-doping is also the responsibility of the athlete. Taking into consideration all of the circumstances of this case including the facts above, even if the sequence of events in this case leading to the use of the “Hokunalin pill” by the Athlete, that is, requesting medical treatment by such primary care doctor and taking the same upon reliance on the doctor’s prescription and the team trainer’s reply, was in line with the guidance policies of the women’s volleyball club to a certain extent, it cannot be recognized that the fault was to such degree as to justify imposing a reprimand consequence upon the Athlete.
- Taking into consideration the above circumstances and the fact that this was a first violation, it is appropriate, upon comprehensively taking into account the Athlete’s degree of fault, to impose a two month period of ineligibility pursuant to Article 10.4 of the Code.

- In this case, the Athlete has been under a provisional suspension pursuant to Article 7.6.1 of the Code from the date of the January 7, 2015 notice by the responsible person of JADA until the time of the present decision (a provisional hearing was held on February 10, 2015 concerning the relevant provisional suspension). Accordingly, pursuant to Article 10.9.2 of the Code, the commencement date for the period of ineligibility shall be January 7, 2015.

Based on the foregoing, we have made our decision as stated above.

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