

Decision of the Japan Anti-Doping Disciplinary Panel

Name of Athlete: Sehun Hong
Sport: Taekwondo

Pursuant to the decision of the hearing panel convened for Case 2012-009, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

May 14, 2013
Japan Anti-Doping Disciplinary Panel
Chair: Toshio Asami

Case 2012-009: Hearing Panel Decision

The hearing panel (the “Hearing Panel”) for Case 2012-009, 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 “Code”), has made the following decision concerning this case pursuant to the results of the hearing held on April 15, 2013 and May 2, 2013 (collectively, the “Hearing”).

May 13, 2013
Kazuki Shishido _____
Katsumi Tsukagoshi _____
Masahiro Murayama _____

Decision:

- A violation of Article 2.3 of the Code is found to have occurred.
- In accordance with Article 9, Article 10.1.1 and Article 10.8 of the Code, each of the individual results obtained during the period from February 24, 2013, the date of occurrence of the violation of the Code in this case, until the commencement date of the period for provisional suspension (including the competition results at the 6th All Japan Taekwondo Championship) shall be disqualified, and all medals, points and prizes obtained during the period above shall be forfeited.
- In accordance with Article 10.3.1, Article 10.9.1 and Article 10.9.2 of the Code,

ineligibility shall be imposed for a period of two years starting from April 7, 2013.

- The expenses for the interpreter required in the Hearing proceedings shall be borne by the athlete's side.

Reasons:

1 Facts found by the Hearing Panel

Based on the relevant evidences submitted to the Hearing Panel by the Japan Anti-Doping Agency ("JADA") and the Athlete respectively, as well as the testimonies given at the Hearing by the Lead Doping Control Officer ("Lead DCO") in this case as well as other DCO and the Chaperone, JADA employees, the Athlete, and the Head of the Medical Science Committee of the All Japan Taekwondo Association ("All Japan Taekwondo Association"), the following facts can be found.

- The Athlete is a taekwondo athlete of South Korean nationality belonging to the Hyogo Taekwondo Association. After graduating from a university in South Korea, the Athlete has been working as a coach at the Association in Japan from around September 2011 being introduced to the chairperson of the Hyogo Taekwondo Association by the Athlete's acquaintance.

Although the Athlete conducts training basically using the Japanese language during his work (coaching taekwondo), it is impossible or difficult for him to read documents written in Japanese and to have a talk using technical terms in Japanese.

- The Athlete participated as an athlete in the men's 74-kilograms weight class at the "6th All Japan Taekwondo Championship" (the "Competition") held on February 24, 2013 at the Komazawa Olympic Park General Sports Ground gymnasium located in Setagaya-ku, Tokyo. Although the Athlete was not of Japanese nationality, he met the qualifications for entry to the Competition because he resided in Japan.
- The Athlete has never been subject to any anti-doping test in the past.
- The Competition Guide for the Competition ("Guide") contained the following descriptions with respect to the anti-doping tests at the Competition:

15. Anti-doping test This competition is an event subject to anti-doping tests in accordance with the Japan Anti-Doping Code. Participants of this competition shall be deemed to have consented to take anti-doping tests at the time of application to the competition in accordance with the Japan Anti-Doping Code.

(.....)

If any participant refuses or evades an anti-doping test conducted at this competition, does not follow the instructions of the testers, fails to complete the procedures for the anti-doping test due to personal reasons such as returning home, etc., such participant may be held to be in violation of the anti-doping rules. Please note that any participant who is held to be in violation of anti-doping rules will be subject to sanctions, etc. in accordance with the Japan Anti-Doping Code.

- The Athlete won the Competition (men's 74-kilograms weight class) and became subject to an anti-doping test by JADA.
- The Athlete was notified by the Chaperone around 17:19 after the finals of the Competition (men's 74-kilograms weight class) finished. Since the Athlete could not read Japanese when the Chaperone, after conducting self-identification, tried to have the Athlete confirm the rights and responsibilities for the anti-doping test, the Chaperone read out loud the explanations regarding the implementation of the anti-doping test, and obtained the Athlete's signature after gaining his acknowledgement.
- After arriving at the doping control station with the Chaperone and an escort, the Athlete checked in around 17:22 to take an urine sample and was waiting at the waiting room, but once left the room around 17:45 in order to attend his own awarding ceremony, and then returned at the doping control station again around 18:07 after the awarding ceremony was over.
- As the Athlete, after returning to the room, said that he had an urge to urinate, one of the DCOs accompanied the Athlete to the bathroom (individual room) for physically handicapped people and tried to take a urine sample. However, the Athlete said that he "could not urinate with someone beside him", and consequently failed to urinate after trying a number of times.
- After that, when the Athlete was trying to urinate, he asked whether he could go home without providing a sample as he would not be able to catch the return flight on time, and as he could not immediately urinate, he returned back to the waiting room.
- At the waiting room, the Athlete heard a statement in Korean by the chairperson of the Hyogo Taekwondo Association of the purport that "you should return without completing the testing because you would not be able to catch the return flight", and ultimately notified the DCO that he would return home without completing the testing.
- The DCO tried to stop the Athlete, and the Head of the Medical Science Committee

of the All Japan Taekwondo Association also tried to stop him as well by explaining that he may be held to be in violation of anti-doping rules if he did not complete the testing. However the Athlete, although having the perception that he would be subject to certain disadvantages if he did not complete the testing, followed the statements made by the chairperson of the Association and left the site.

- According to the Athlete, the chairperson of the Hyogo Taekwondo Association stated on a later day that even if he failed to complete the testing and were to be held in violation of the anti-doping rules, there would be nothing to worry about as he would only be forfeited of this medal or become subject to ineligibility as athlete, and the Athlete also shared the same perception until the Hearing was held.
- On April 8, 2013, JADA determined that the actions taken by the Athlete above fell under “refusing, or failing without compelling justification to submit to Sample collection after notification as authorized in these Anti-Doping Rules or otherwise evading Sample collection” of Article 2.3 of the Code, and resolved to impose upon the Athlete a provisional suspension pursuant to Article 7.6 of the Code, and notified the Athlete to such effect by phone, and dispatched a written notification to such effect, which arrived at the Athlete on April 9, 2013.

2 Whether or not a violation of the Code has occurred

We consider whether or not the Athlete can be found to be in violation of Article 2.3 of the Code. According to the facts found by the Hearing Panel in 1 above, it is recognized that the Athlete failed to provide a sample (suspended the procedures for taking a sample and left to return home) after receiving the notification as authorized in the Code at the testing after the competition at the Competition.

In this regard, the Athlete gives as the reason why he did not take a sample the fact that he may not have been able to catch the return flight home (if he had continued with taking a sample). However, taking into consideration such factors that the Guide provided that “if any participant fails to complete the procedures for the anti-doping test due to personal reasons such as returning home, etc., such participant may be held to be in violation of the anti-doping rules”, and the participants at the competition were also notified to such effect in advance; that even if the Athlete was not aware of the existence of such provision due to his Japanese linguistic ability, he was still aware that he would receive certain disadvantages if he failed to complete the doping test (that if he left without completing the testing, he may be held to be in violation of anti-doping rules) as recognized in 1 above; and that if the failure to collect a sample were to be permitted

due to such circumstance in a doping test, an athlete would become easily able to evade a doping test, and would undermine the purpose of anti-doping rules, the fact that the Athlete may not have been able to catch a flight in this case falls far short of constituting a “compelling justification” for the failure to take a sample.

It is recognized in this case that the chairperson of the Hyogo Taekwondo Association, whose status is that of an employer of the Athlete, made a statement, upon the Athlete’s suspension to take a sample, that “you should return without completing the testing because you would not be able to catch the return flight”. We would like to mention here that this was an extremely inappropriate statement in light of the purpose of the Code, considering together the facts that, irrespective of the perception of the chairperson himself and the specific wordings, this statement at least in its form encourages acts in violation of anti-doping rules, and the person who made this statement was in a position to proactively promote anti-doping activities as the chairperson of a sporting organization, and the Athlete as an employee of the Association was in a position virtually incapable of refusing to follow the statements made by the chairperson. The Athlete stated at the Hearing that he thought that even if he violated anti-doping rules he would only become unable to participate in future competitions and would not be subject to suspension of his coaching qualifications; however, it is without saying that such misunderstanding on the part of the Athlete (even if the Athlete had truly misunderstood) is merely a misunderstanding of the results of an act in violation of anti-doping rules, and does not justify an act of failure (suspension) to take a sample.

Therefore the Athlete in this case can be found to have violated Article 2.3 of the Code (“refusing, or failing without compelling justification to submit to Sample collection after notification as authorized in these Anti-Doping Rules or otherwise evading Sample collection”). A provisional suspension has been ordered as of April 8, 2013 in this case, and the validity thereof was recognized thereafter at the provisional hearing held on April 15, 2013 pursuant to Article 7.6.2 b) of the Code; therefore, it is appropriate to consider that each of the individual results of the Athlete obtained during the period from the date of the violation of the anti-doping rules until the commencement date of the provisional suspension (including the competition results at the 6th All Japan Taekwondo Championship) shall be disqualified, and all medals, points and prizes obtained during the period above(if any) shall be forfeited.

Since the violation by the Athlete this time is recognized to be a first violation, the period of ineligibility for this time would be determined pursuant to the provisions of Article 10.3.1 of the Code, and accordingly the period of ineligibility to be imposed upon the Athlete shall be for two years. (Just to make sure, the violation for this time does not involve any circumstance of “No (Significant) Fault or Negligence” as set forth in Article 10.5.1 and Article 10.5.2 of the Code. Even if the statement made by the chairperson of the Hyogo Taekwondo Association was virtually an instruction to the Athlete to “suspend taking a sample”, the Athlete cannot be adjudged to have had “No (Significant) Fault or Negligence” in following such instructions.)

In the case that a provisional suspension is validly imposed, the period during which an athlete submitted to provisional suspension is included in the period of ineligibility above pursuant to Article 10.9.2 of the Code. According to the results of the hearing in this case, the Athlete can be found to have submitted to provisional suspension during the period from April 7, 2013, the date on which he acknowledged that he had violated the anti-doping rules, until today, the commencement date of the original period of ineligibility. Accordingly, pursuant to Article 10.9.1 and Article 10.9.2 of the Code, the commencement date for the period of ineligibility shall be April 7, 2013, the date on which the Athlete voluntarily submitted to the provisional suspension.

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