

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND CRAIG WALLACE

Respondent

AND SOFTBALL NEW ZEALAND

Interested Party

**DECISION OF SPORTS TRIBUNAL
27 July 2016**

Hearing: 25 July 2016 by telephone conference

Tribunal: Sir Bruce Robertson (Chairperson)
Paula Tesoriero, MNZM
Chantal Brunner

Present: Paul David QC, counsel for Applicant
Graeme Steel and Jude Ellis, Drug Free Sport NZ
Mark Hammond and Karina McLuskie, counsel for
Respondent
Craig Wallace, Respondent

Registrar: Megan Lee-Joe

Proceedings

1. Drug Free Sport New Zealand (DFS) alleged that Mr Wallace committed an anti-doping rule violation as evidenced by the presence of a Prohibited Substance, Salbutamol in a concentration higher than is permitted in a sample taken from him in competition on 21 February 2016. This contravened Rule 2.1 of the Sports Anti-Doping Rules 2016 (SADR). Mr Wallace waived both the B sample analysis and the pharmacokinetic study.
2. On 29 June 2016, without opposition, Mr Wallace was provisionally suspended pending the outcome of the substantive hearing. The substantive application for anti-doping rule violation proceedings was filed by DFS on 22 June 2016.
3. Mr Wallace admitted the allegation but asked to be heard as to the appropriate sanction.

Background

4. Mr Wallace has a long and distinguished involvement in softball. Mr Wallace described his passion and dedication to the sport and stated that he wanted to participate in the game for the rest of his life. He outlined his current involvement in the sport which included playing at representative level, and coaching (including setting up a training academy), as well as involvement in governance of the sport. His family is also deeply involved in softball. Mr Wallace has not played softball since the time of the violation. Witness statements describe Mr Wallace as a highly respected and well liked member of the softball community who contributes his time extensively to many facets of the game and note that the effects of the violation on Mr Wallace have been salutary.
5. The integrity of Mr Wallace is not in question. The character of a person is not the issue in a strict liability regime like the SADR, but does provide some general context.

Agreed Facts

6. Counsel for the parties, having exchanged written briefs of evidence and submissions prior to the hearing, agreed as to the version of events.
7. Mr Wallace has had asthma for most of his life, having been diagnosed at the age of five years. Mr Wallace has self-managed his asthma, including through the use of a Ventolin inhaler. He explained that his asthma symptoms vary depending on things such as stress and physical condition. He described that his recent promotion at work resulted in some stress and he was also not able to train as much as normal resulting in weight gain, thereby contributing to the worsening of his asthma. In the week leading to the positive test, he was also sick, meaning he relied more heavily on his Ventolin inhaler.

8. Mr Wallace's nurse confirmed that he had not been using his inhaler correctly, meaning that the medication was not going directly into his lungs. This appears to have contributed to overuse of his Salbutamol with minimal effect on his symptoms.
9. Salbutamol is a specified substance in the Prohibited List 2016 under S3 Beta-2 agonists. Mr Wallace's sample taken on 21 February 2016 was found to contain a concentration of Salbutamol at 1.5 ug/ml (1500 ng/ml) which is above the permitted concentration of 1000ng/ml.

Relevant Provisions of the SADR

10. As DFS accepted the violation was not committed with "*intention*" as defined under SADR 10.2.3 the presumptive period of ineligibility is two years under SADR 10.2.2.
11. The provisions of the SADR that allow for the possible elimination or reduction of the standard period of ineligibility are Rule 10.4 (no fault) and Rule 10.5.1.1 (no significant fault or negligence). This is not a case where it was suggested there was no fault under Rule 10.4.
12. Under Rule 10.5.1.1, where the Respondent can establish "*No Significant Fault or Negligence*" 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 Respondent's degree of fault.
13. For Mr Wallace to rely on Rule 10.5.1.1 he must first show how the specified substance entered his system. DFS accepted that Mr Wallace's use of Ventolin was therapeutic and that the elevated reading likely came about as a result of Mr Wallace 'over-puffing' on his Ventolin inhaler and not using the inhaler properly in circumstances where he was seeking to relieve his asthma rather than the intention to commit a violation.
14. The issues before the Tribunal are:
 - (a) Is the Tribunal satisfied that Mr Wallace can establish "No Significant Fault or Negligence" in relation to the violation?
 - (b) If so, what period of ineligibility is appropriate having regard to Mr Wallace's degree of Fault (between a reprimand / no period of ineligibility and two years of ineligibility)?

No Significant Fault or Negligence

15. For the Tribunal to consider any reduction of the two-year period of ineligibility, Mr Wallace must establish, under the circumstances of this case and in the context of the strict liability regime imposed by SADR, that there was no significant fault or negligence in relation to the violation.

16. DFS in their submission considered that Mr Wallace's fault can properly be regarded as "*not significant*".
17. The Tribunal agrees. We have taken account of all of the factual circumstances involved and conclude that Mr Wallace has satisfied the requirements of SADR 10.5.1.1 that Mr Wallace's fault is regarded as "*not significant*" in relation to the violation. The Tribunal accepted the evidence submitted that Mr Wallace had been prescribed Ventolin to treat a long term asthma condition and that the elevated level of Salbutamol was due to Mr Wallace's incorrect use of his Ventolin inhaler, which was prescribed to be taken "as required".
18. These factors need to be weighed against the obligations of utmost caution imposed on athletes by the Anti-Doping regime. SADR 2 provides that it is the responsibility of the athlete to know what constitutes an anti-doping rule violation. Further, SADR 2.2.1 provides a personal duty on the athlete to ensure that no prohibited substance enters his or her body.
19. Mr Wallace failed to check his medication and dosage with DFS or discuss the appropriateness of taking Ventolin in the context of his sport with his doctor. Instead, he relied on the fact he was prescribed Ventolin "as required" and thought this meant he could safely take it.
20. Although there was some level of fault on the part of Mr Wallace (in failing to check his medication appropriately), it did not amount to significant fault or negligence.

Sanction

21. Having concluded there is no significant fault or negligence on the part of Mr Wallace, the Tribunal must therefore determine in accordance with SADR 10.5.1.1 a sanction that falls between at a minimum, a reprimand and no period of ineligibility and at a maximum, two years of ineligibility.
22. DFS suggested a period of ineligibility of between one – three months would be appropriate, while counsel for Mr Wallace suggested a period of one month would be appropriate.
23. The Tribunal commends counsel for sensibly coming to a recommendation on sanction for us to consider.

Decision

24. The Tribunal has taken into account the following circumstances in arriving at its decision:
 - a. the clear evidence that Mr Wallace took Ventolin as prescribed for therapeutic use;

- b. the evidence that the elevated level of Salbutamol in Mr Wallace's system was due to his incorrect technique in using his inhaler and consequently taking more puffs;
 - c. Mr Wallace's immediate acceptance of the violation and working constructively with DFS; and
 - d. the fact Mr Wallace has played softball at the highest level and knew about the work of DFS, yet took no steps to check the status of his medication, instead relying on the fact it was prescribed by his Doctor.
25. Weighing up these factors, the Tribunal determines that the appropriate sanction is to suspend Mr Wallace for a period of ineligibility of one month. This is to be backdated to the provisional suspension order made on 29 June 2016.
26. Mr Wallace is clearly not a drug cheat. He is a well-respected person who has given tirelessly for his sport and intends to do so in the future. This case emphasises the importance of all athletes checking medication with DFS, rather than simply believing they are permitted to take it in sport because it has been prescribed by a doctor to treat a medical condition.
27. Given Mr Wallace's coaching and influence on young softballers, he has the opportunity to use this experience to help younger athletes be aware of the anti-doping regime and the need to be extra careful about any medication or substance they take.

Dated: 27 July 2016



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Paula Tesoriero, MNZM