

Before The American Arbitration Association

United States Anti-Doping Agency

v. Case No. 01-16-0005-4245

Mary C. Hall

Final Award

I. Background

Mary C. Hall is a senior weightlifter who competed in the USAW National Championships in Salt Lake City, Utah in May 2016. On May 6, 2016, she was selected for in-competition drug testing. When she arrived at doping control, she signed a form on which she provided her email address, phone number, and street address. On the form she declared the use of birth control along with Fish Oil, Creatine HCL, and Vitamin D. The form stated that the information she had provided “fully and accurately represents my declarations to the USADA Doping Control Officer and that my declaration is truthful and complete.” A full menu urine test was performed.

By letter dated June 1, 2016, Lisa McCumber, USADA’s Testing Results Manager, advised Ms. Hall that her “urine Sample #1583425 collected at the USAW National Championships on May 6, 2016, was sent to the World Anti-Doping Agency (“WADA”) accredited laboratory in Salt

Lake City, Utah” and that the laboratory reported that Ms. Hall’s A Sample “contains oxandrolone and its metabolite expioxandrolone” which are Prohibited Substances in the class of anabolic agents on the WADA Prohibited List. Ms. Hall was told that she could accept the lab results from her A Sample and her case would be forwarded to the independent Anti-Doping Review Board or she could request that her B Sample be analyzed.

The June 1, 2016 letter further advised Ms. Hall that if it was ultimately determined that a doping violation had occurred she would be subject to sanctions pursuant to “the IWF Anti-Doping Policy and Articles 10.1,10.2 and 10.8 of the World Anti-Doping Code . . . which may be reduced as set forth in the IWF Anti-Doping Policy and in Articles 10.4, 10.5 and 10.6 of the [WADA] Code.” The June 1 letter also said that, “[b]ecause your A Sample was found to contain anabolic agents which are not Specified Substances within the meaning of the WADA Prohibited List and Article 4.2.2. of the Code, USADA has determined that a Provisional Suspension should be imposed against you as provided for in Section 12 of the Protocol, consistent with Article 7.9.1 of the Code.”

On June 2, 2016, Ms. Hall signed an Acceptance of Laboratory Findings Waiver of Right to B Sample Analysis And Waiver of Right to Contest Laboratory Findings: “I, Mary Hall, accept the finding of the WADA

accredited laboratory in Salt Lake City, Utah . . . that my urine Sample #1583425 collected at the USAW National Championships on May 6, 2016, was positive for oxandrolone and its metabolite expioxandrolone, constituting the finding of prohibited substances in my Sample.” She also waived her right to a B Sample analysis: “I voluntarily, knowingly, and intelligently waive my right to have a B sample analysis conducted on Sample #1583425. I do not contest the Laboratory’s finding that my Sample was positive for oxandrolone and its metabolite expioxandrolone, constituting the finding of prohibited substances in my Sample. I voluntarily, knowingly, and intelligently accept the Laboratory findings and waive any right to contest the results of the Laboratory with respect to my Sample collected on May 6, 2016.”

II The Charges Against Ms. Hall and Her Failure to Appear

By letter dated August 30, 2016, which was sent by email and to Ms. Hall’s home address, Lisa McCumber, USADA Testing Results Manager, advised Ms. Hall as follows: “USADA charges you with an anti-doping rule violation for the presence of oxandrolone and its metabolite expioxandrolone in your urine Sample and for the use and/or attempted use of oxandrolone and its metabolite expioxandrolone or substances with similar chemical structure or similar biological effect(s) pursuant to Articles

2.1 and 2.2 of the IWF Anti-Doping Policy and Articles 2.1 and 2.2 of the Code, which have been incorporated into the Protocol.”

USADA sought the following sanctions:

1. Up to a four (4) year period of ineligibility as described in Article 10.2 of the IWF Anti-Doping Policy and the Code, beginning on June 1, 2016, the day Ms. Hall received notice of her provisional suspension;
2. Disqualification of the competitive results obtained on and subsequent to May 6, 2016, the date Ms. Hall participated in the USAW National Championships, including forfeiture of any medals, points and prizes consistent with the IWF Anti-Doping Policy;
3. Up to a four (4) year period of ineligibility, beginning on June 1, 2016, the day Ms. Hall received notice of her provisional suspension, from participating or coaching in U.S. Olympic, Pan American Games or Paralympic Games Trials, being a member of any U.S. Olympic, Pan American Games or Paralympic Team and having access to the training facilities of the USOC Training Centers or other programs and activities of the USOC including, but not limited to benefits, grants, awards or employment as set forth in Section 6 of the USOC NADP and further defined by Attachment A therein; and,
4. All other sanctions and or consequences which may be required by the Applicable Rules, including but not limited to, any fines, costs, return of prize money or other financial consequences.

The August 30, 2016 letter gave Ms. Hall until September 9 to either sign the Acceptance of Sanction Form or request a hearing before the AAA. Ms. Hall did not respond by September 9.

By letter dated October 27, 2016, which was sent again to Ms. Hall's email address and to her home address, USADA gave Ms. Hall a "FINAL NOTICE" to either sign the Acceptance of Sanction form or request a

hearing. That letter set a new deadline November 3, 2016. Ms. Hall did not respond by November 3.

By letter dated December 2, 2016, which was again sent to Ms. Hall's email address and to her home address, USADA give Ms. Hall a **"SECOND FINAL NOTICE – Sample #1593425 – USAW National Championships."** The December 2 letter explained that USADA could not wait any longer: "USADA has given you several opportunities to provide an explanation with sufficient corroboration as to the source of your positive test" and that USADA still needed the packet of information that Ms. Hall said she had sent through the mail. The letter concluded with this statement: **"We can no longer delay this matter; therefore, this will be your final notice.** You must request a hearing or sign the Acceptance of Sanction pursuant to the USADA Protocol on or before **5:00 p.m. Mountain Time on December 7, 2016. If you fail to respond by December 7, 2016, the sanction in the bulleted section below will take effect that day and USADA will make a public announcement concerning your doping violation and its consequences."**

On December 7, 2016 -- the deadline set forth in the December 2 -- Ms. Hall sent the following email message to USADA: "I'm requesting a hearing in order to obtain the most information available from my doctors

and health records in regards to my case. I know my case will not be dismissed but I'm confident that my Sentence will be decreased with this information that I will be able to provide."

On December 12, 2016, Travis Tygart, CEO of USADA notified the AAA that "Ms. Hall has requested a hearing before the" AAA. On December 22, 2016, Jeff Cook of USADA advised the AAA that, USADA and Ms. Hall had agreed on the selection of the Arbitrator for the case: "I am writing to inform you that the parties have agreed upon Judge Thomas serving as the single arbitrator in this case." By email dated December 29, 2016, Jeff Cook of USADA advised the AAA that he had spoken to Ms. Hall about the location of the arbitration: "I was able to speak to Ms. Hall, and we are in agreement that Washington, DC should be the location for the hearing."

By letter dated January 23, 2017, the AAA notified the parties that the preliminary hearing was set for February 6, 2017 at 1:00 PM Pacific Time by conference call. The Notice letter was sent by email to Ms. Hall and by Certified U.S. Mail to her home address. Nevertheless, Ms. Hall did not appear at the Preliminary Hearing.

Under questioning from the Arbitrator, Counsel for USADA advised that the email that was sent to Ms. Hall notifying her of the hearing did not

“bounce back” thus indicating that it had been delivered as had previous emails sent to that same address. Counsel for USADA also advised that after Ms. Hall agreed to the choice of the Arbitrator and agreed to the location for the hearing she had been difficult to reach with respect to the exchange of information and that she had failed to provide requested information. The Preliminary Hearing proceeded despite Ms. Halls absence.

In the Preliminary Hearing Order, the Arbitrator set an evidentiary hearing for March 3, 2017 by conference call and directed counsel for USADA and staff for the AAA to make every effort to notify Ms. Hall of the scheduled hearing as well as to be prepared to advise the Arbitrator of the efforts to give notice to Ms. Hall at the time of the evidentiary hearing.

IV The Evidentiary Hearing

Ms. Hall did not appear at the evidentiary hearing. The AAA advised that the notice of the evidentiary hearing that had been sent to Ms. Hall by Certified U.S. Mail resulted in a return receipt signed by someone at that address. Counsel for USADA advised that their attempts to reach Ms. Hall had not garnered any responses and that she never sent the documents requested from her though she had told USADA that the documents would explain her positive result.

At the hearing, USADA's Counsel argued that the penalty pursuant to 10.2.1 of the IWF Anti-doping policy "shall be 4 years" unless it was not intentional. On questioning from the Arbitrator, USADA's expert witness, Matthew Fedoruk, testified that the drug in question in this case was not the type of drug that might be encountered inadvertently in over the counter ointments, balms, or the like. Mr. Fedoruk also pointed out that the concentration of the banned substance was such that it had to have been taken within 3 days of the testing. He testified further that the prohibited substance found in Ms. Hall's urine sample promotes the growth of lean muscle mass which is something that weightlifters try to achieve.

Mr. Fedoruk noted that Ms. Hall had not declared a TUE on her doping control form and that her positive test results had nothing to do with the substances that she had declared on the form. The witness also stated that the concentration of the prohibited substances in Ms. Hall's urine sample was medium on the range of low, medium, to high. Mr. Fedoruk said further that the lab work on Ms. Hall's urine sample was done to international standards and that when tests are done to that standard the results have a presumption of correctness.

V. The Propriety of Proceeding In the Absence of Ms. Hall

Rule 31, Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes addresses what happens when a party is absent:

“Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.”

The Arbitrator has not been made aware of any law, that in this situation prohibits a proceeding where the athlete does not appear.

Further, the Arbitrator thinks that Ms. Hall was given due notice. As the evidence in this case indicates, Ms. Hall provided her email address, phone number, and home address on her doping control form in May 2016. As the case proceeded she sometimes responded to messages sent to those addresses and sometimes not. Notably, when she was told in the December 2 letter that unless she responded by December 7 she would be held responsible for a doping violation and that the results would be made public, she responded.

Further, as USADA noted at the hearing, the notice that was sent to Ms. Hall regarding the scheduling of the evidentiary hearing did not “bounce back.” This means to the Arbitrator that the message got through

just as other messages had in the past. Further, the AAA staff advised that the certified letter that was sent to her home address was accepted by someone there who signed the return. For these reasons, the Arbitrator rules that Ms. Hall received due notice yet failed to appear.

Rule 31 also provides that a decision not be rendered by default and that the party which appeared must present its case. That is precisely what happened here. USADA adduced the documentary evidence of the doping violation and the expert testimony from Mr. Fedoruk. The Arbitrator rules that the provisions of Rule 31 have been complied with and that this case can proceed to resolution in the absence of Ms. Hall.

VI. Findings and Conclusions

A. Burden of Proof

USADA has the burden of proof:

“The Anti-Doping Organization shall have the burden of establishing that an anti-doping violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.”

Article 3 § 3.1, U. S. Anti-Doping Agency Protocol for Olympic and Paralympic Movement Testing.

The Arbitrator is of opinion that USADA has met this burden. Ms. Hall's urine Sample #1583425 contained oxandrolone and its metabolite expioxandrolone, both of which are Prohibited Substances in the class of anabolic agents on the WADA Prohibited List. As USADA's expert witness testified, this test result came from a WADA accredited laboratory that was in compliance with international standards and thus its results are presumed to be correct. The substances that Ms. Hall declared on her doping control form do not explain the test results, nor is there any other evidence in the record that explains those results. Moreover, Mr. Fedoruk testified that these prohibited substances are not likely to be ingested mistakenly. In addition, the Arbitrator notes that Ms. Hall waived the B Sample analysis and did not contest that a prohibited substance was found in her urine sample; the language of the waiver form is compelling: "I do not contest the Laboratory's finding that my Sample was positive for oxandrolone and its metabolite expioxandrolone, constituting the finding of prohibited substances in my Sample." Thus, the Arbitrator concludes that Ms. Hall committed a doping violation.

B. Determination of Sanctions and Penalties

USADA argues that Ms. Hall's doping violation requires a sanction of a four (4) year period of ineligibility, among other things. Section 10.2.1 of

the IWF 2015 Anti-Doping Policy provides that, “The period of *ineligibility* shall be four years where:

Section 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.

First, Ms. Hall’s violation does not involve a Specified Substance. This means that the only way for the period of ineligibility to be reduced from the required four (4) years is for Ms. Hall or someone acting on her behalf to establish that the violation was not intentional. Ms. Hall made no effort in this case to establish the lack of intention. All we know from this record is that when USADA first communicated with Ms. Hall about this case she apparently stated that she had health records that would explain the test result. USADA asked Ms. Hall to provide those records, but this was never done. Given the lack of evidence to establish that the doping violation was not intentional, the command of the IWF penalty provision is clear: “The period of ineligibility shall be four years.”

In addition to the four year period of ineligibility, USADA requests the other sanctions and penalties that were set forth in its August 30, 2016 charging letter. The Arbitrator is of opinion that those additional sanctions and penalties are appropriate.

C. Imposition of Sanctions and Penalties

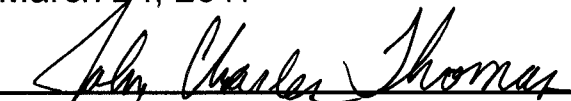
The Arbitrator Orders the following:

1. That Ms. Hall serve a four (4) year period of ineligibility as described in Article 10.2 of the IWF Anti-Doping Policy and the Code, beginning on June 1, 2016, the day Ms. Hall received notice of her provisional suspension;
2. That Ms. Hall's competitive results obtained on and subsequent to May 6, 2016, the date Ms. Hall participated in the USAW National Championships, be disqualified and that she forfeit any medals, points and prizes obtained on and subsequent to May 6, 2016 consistent with the IWF Anti-Doping Policy;
3. That Ms. Hall serve a four (4) year period of ineligibility, beginning on June 1, 2016, the day Ms. Hall received notice of her provisional suspension, from participating or coaching in U.S. Olympic, Pan American Games or Paralympic Games Trials, being a member of any U.S. Olympic, Pan American Games or Paralympic Team and having access to the training facilities of the USOC Training Centers or other programs and activities of the USOC including, but not limited to benefits, grants, awards or employment as set forth in Section 6 of the USOC NADP and further defined by Attachment A therein; and,

4. That Ms. Hall be required to pay any fines, costs, return of prize money, or other financial consequences that may be required by the IWF rules for the violation of its Anti-Doping Policy.

It is so Ordered.

March 24, 2017


John Charles Thomas, Arbitrator