



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2008/A/1490 WADA v./ USADA & Thompson**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

- President: Mr. Henri C. Alvarez, Barrister and Solicitor in Vancouver, Canada
- Arbitrators: Professor Richard H. McLaren, Barrister and Solicitor in London, Canada  
Mr. Jeffrey Benz, Attorney-at-Law in Los Angeles, USA

in the arbitration between

**WORLD ANTI-DOPING AGENCY, Montreal, Quebec, Canada**  
Represented by Dr. François Kaiser, Attorney-at-Law in Lausanne, Switzerland

- the Appellant -

and

**UNITED STATES ANTI-DOPING AGENCY, Colorado Springs, United States of America**  
Represented by Mr. William Bock III, Attorney-at-Law in Colorado Springs, United States of America

- the First Respondent -

**MR. ERIC THOMPSON, Herrin, Illinois, United States of America**  
Represented by Mr. Michael Straubel, Attorney-at-Law in Valparaiso, United States of America

- the Second Respondent -

\*\*\*\*\*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 2 -

## 1. INTRODUCTION

1.1 This matter concerns an appeal by the Appellant, World Anti-Doping Agency (hereinafter referred to as "WADA" or the "Appellant") from the award of the arbitrator issued pursuant to the rules of the American Arbitration Association (hereinafter referred to as the "AAA") on 31 January 2008 sanctioning the Second Respondent, Mr. Eric Thompson, with a one year period of ineligibility for an admitted doping violation. The issue in dispute between the parties is whether the two year period of ineligibility provided for in Rule 40.1(a) of the International Association of Athletics Federations Anti-Doping Rules (the "IAAF Rules") should be reduced to a one year period of ineligibility pursuant to Rule 40.3 of the said rules.

## 2. THE PARTIES

2.1 WADA is an independent international anti-doping agency, whose aim is to promote, coordinate and monitor, at the international level, the prohibition against doping in sports.

2.2 The First Respondent, the United States Anti-Doping Agency (hereinafter referred to as "USADA"), is the independent anti-doping agency for Olympic sports in the United States of America and is responsible for conducting drug testing and adjudicating positive test results pursuant to the USADA Protocol for Olympic Movement Testing, ("USADA Protocol").

2.3 The Second Respondent, Mr. Eric Thompson, is a track athlete who competes primarily in the sport of high-jumping. At the time of the relevant events, Mr. Thompson was 18 years of age and had just graduated from high school.

## 3. BACKGROUND FACTS

3.1 The relevant background facts, as found by the arbitrator (hereinafter referred to as the "AAA Arbitrator") in his award, are undisputed and are as follows:

2.1 Prior to his graduation, Mr. Thompson had a distinguished high school career as a track athlete in the State of Illinois, winning nine individual or team event State Championships. His specialty is the high jump, in which he was one of the outstanding jumpers nationally by his senior year.

2.2 Mr. Thompson had never competed in any athletic events at a level higher than Illinois high school sports. The high school events in which he competed did not include testing for doping, nor were doping rules a subject of instruction as part of his school sports program, although the coaches did conduct team meetings at which the importance of "making good choices" in life styles was emphasized. Herrin High School did conduct limited monthly, random doping testing of a few students among those participating in extracurricular activities, but Mr. Thompson was never tested as part of that program.

2.3 Mr. Thompson was a heavily recruited high school track athlete, and during his senior year he was awarded and accepted a full-paid athletic scholarship to attend the University of Arkansas, where he had long hoped to enroll because of its distinguished track and field tradition. Mr. Thompson's family circumstances would not permit him to attend college in the absence of substantial financial aid.

2.4 At about the time of his high school graduation, Mr. Thompson and his coaches determined, essentially on the spur of the moment in June 2007, and only a few days before the

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 3 -

meet, to enter Mr. Thompson in the high jump event at the USA Junior National Track & Field Championship (the "Junior National Championship", also known as the "U.S. Outdoor Nationals") in Indianapolis, Indiana, so that he might gain experience against other talented high jumpers in preparation for his college athletic career.

2.5 During the evening of June 19, 2007 Mr. Thompson and several of his friends attended a high school graduation party in their hometown. Alcohol was consumed at the party, and a person not known to Mr. Thompson offered to sell cocaine to a group of attendees including Mr. Thompson. Mr. Thompson contributed \$5.00 toward this group purchase and consumed a small amount of cocaine nasally by inhaling once.

2.6 Mr. Thompson had no prior history of involvement with cocaine or any other narcotic and testified credibly that this was the only occasion in his life when he consumed any prohibited drug. His father and his high school coach both testified that Mr. Thompson had never been involved in any disciplinary problems.

2.7 On the morning of June 20, 2007 Mr. Thompson's high school track coach and an assistant coach/guidance counselor drove Mr. Thompson to Indianapolis. Prior to that time, neither of the coaches had had any experience coaching participants in national track meets; and neither they nor Mr. Thompson had read materials available on the Junior National Championship or USADA websites concerning doping testing. In the car during the drive to Indianapolis, Mr. Thompson read materials sent to him prior to the event stating that there would be random doping testing and that the first and second place winners in each event would be tested.

2.8 Mr. Thompson mentioned this to his coach, and they had a brief conversation about doping testing in the car. The coach remarked, "We don't have to worry about that, do we?". Mr. Thompson, in the back seat of the car, avoided the question, responding, "Oh, come on, Coach." In fact, Mr. Thompson at that moment became fearful about the fact that he had consumed a small amount of cocaine the previous night. However, he did not disclose this to his coach because of youthful nervous embarrassment.

2.9 Mr. Thompson competed in the high jump in Indianapolis on June 21, 2007, the second day after his consumption of cocaine at the graduation party. He placed second in the event, although his best jump was significantly below his prior jumping achievements. As a result of placing second, Mr. Thompson was subject to doping testing.

2.10 Cocaine is among the prohibited substances in category S6 of the World Anti-Doping Code 23007 Prohibited List (stimulants). Testimony at the hearing from Dr. Richard Stripp, an expert toxicologist, established that cocaine ingested nasally could have a stimulant effect only within a period of minutes, or up to an hour, depending on the dose, and would have no continuing stimulant effect two days after ingestion. There is no suggestion that Mr. Thompson ingested cocaine with any intention to influence his athletic performance approximately two days later.

2.11 The parties have stipulated, as is set forth below, that Mr. Thompson's urine sample specimen number 1516794 tested positive for the substance benzoyllecgonine, a metabolite of cocaine. Testimony from Dr. Stripp confirmed that the test results were consistent with the athlete having consumed cocaine within the prior two days and that the presence of the chemical in Mr. Thompson's body could have had no positive effect on his performance at the Junior National Championship in Indianapolis. These facts are not contested.

2.12 When he was advised of the test results, Mr. Thompson confessed what he had done to his parents and his high school coach and accepted responsibility for his actions. He agreed to an immediate suspension from further competition and has cooperated fully with the USADA in this proceeding.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 4 -

2.13 Although Mr. Thompson had planned to enroll in the University of Arkansas for the Fall 2007 semester, he was unable to do so because of a delay in submitting certain paperwork required for admission. The delay was caused by a junior college at which Mr. Thompson had taken a course and not by Mr. Thompson. As a result, Mr. Thompson enrolled at the University of Arkansas for the Spring semester on January 14, 2008. During the Fall of 2007 he worked with his father as a roofer, earning \$8 per hour, in Herrin.

2.14 Because of his agreement to suspension for a doping offense, Mr. Thompson is not eligible to participate in track activities at the University of Arkansas. However, since his athletic scholarship previously had been granted for the school year 2007-2008, he is attending the university for the present semester on full scholarship.

2.15 The assistant coach in charge of jumping events at the University of Arkansas, who would be Mr. Thompson's coach there, testified at the hearing that athletic scholarships are granted on a year-by-year basis and reviewed toward the end of each year to determine whether they should be renewed. Mr. Thompson's scholarship therefore will be reviewed for possible renewal in the Spring of 2008. The Arkansas coach testified that, if Mr. Thompson is ineligible to compete during the 2008-2009 season, it is likely that his athletic scholarship will not be renewed. Without the scholarship, Mr. Thompson would not be able to continue to attend the University of Arkansas.

2.16 Mr. Thompson has committed to participate in a substance abuse counseling program at the University of Arkansas, beginning immediately.<sup>1</sup>

3.2 After he was charged with an IAAF Rules violation for testing positive for cocaine, Mr. Thompson exercised his right to a hearing before the AAA Arbitrator pursuant to the USADA Protocol, Articles 10(a) and 10(b). During the course of the proceedings before the AAA Arbitrator, the parties stipulated to the following facts:

3.1 That the USADA Protocol for Olympic Movement Testing ("Protocol") governs the hearing for an alleged doping offense involving USADA specimen number 1516794.

3.2 That the mandatory provisions of the World Anti-Doping Code ("WADA Code") including, but not limited to, the definitions of doping, burdens of proof, Clauses of Prohibited Substances and Prohibited Methods, and sanctions, and contained in the USADA Protocol at Annex A, and the International Association of Athletics Federations ("IAAF") Anti-Doping Rules are applicable to this hearing for the alleged doping offense involving USADA specimen number 1516794.

3.3 That Mr. Thompson gave the urine sample designed as USADA specimen number 1516794 on June 21, 2007, as part of the USADA testing program at the U.S. Outdoor Nationals.

3.4 That each aspect of the sample collection and processing for the A and B bottles of USADA specimen number 1516794 was conducted appropriately and without error.

3.5 That the chain of custody for USADA specimen number 1516794 from the time of collection and processing at the collection site to receipt of the sample by the World Anti-Doping Agency accredited laboratory at the University of California at Los Angeles ("UCLA Laboratory") was conducted appropriately and without error.

3.6 That the UCLA Laboratory's chain of custody for USADA specimen number 1516794 was conducted appropriately and without error.

<sup>1</sup> Arbitral Award of James H. Carter in Case No.: AAA No. 52 190 00556 07, hereinafter referred to as the "AAA Award", pp. 2-6.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 5 -

3.7 That the UCLA Laboratory, through accepted scientific procedures and without error, determined the sample positive for the finding of the substance benzoylecgonine, a metabolite of cocaine, in both the A and B bottles of USADA specimen number 1516794 ("Positive Test").

3.8 That Mr. Thompson agrees that the Positive Test with a finding of the substance benzoylecgonine in both the A and B bottles of USADA specimen number 1516794 is a first doping offense.

3.9 That the parties agree that the period of ineligibility will be a maximum of two (2) years beginning on the date of the hearing panel's decision with credit being given for the time Mr. Thompson has served a provisional suspension beginning on July 18, 2007, until the date of the hearing panel's decision so long as Mr. Thompson does not compete during the period of any provisional suspension.<sup>2</sup>

3.3 In his award of 31 January 2008, the AAA Arbitrator found that Mr. Thompson committed a doping violation, was responsible for his conduct and should be sanctioned for competing with a prohibited substance in his body. However, the AAA Arbitrator went on to find that Mr. Thompson had committed the doping violation without significant fault or negligence. In this respect, the arbitrator found as follows:

5.7 Nevertheless, the fault here was not "significant" in view of the totality of the circumstances. Mr. Thompson was young and inexperienced and ingested cocaine a single time in his life. He did so apparently out of a wrong-headed sense of experimentation and not to achieve any competitive athletic advantage, nor did he achieve any. Mr. Thompson's testimony at the hearing, and testimony of his father and high school coach, established that he is a humble and contrite person who recognizes the magnitude of his mistake and accepts its serious consequences.

5.8 Mr. Thompson had had no experience with anti-doping regulations and had no one in a position to advise him. He had graduated from high school at the time in question, was not part of a continuing coaching program and was accompanied to the Junior National Championships by what were at that point former coaches who themselves had no experience with the relevant anti-doping testing. This does not excuse Mr. Thompson's lack of knowledge of the applicable anti-doping rules, but it is a relevant mitigating circumstance in the case of a young athlete with no available informed guidance.

5.9 In these circumstances, it is appropriate to limit the period of Mr. Thompson's suspension to one year.<sup>3</sup>

3.4 On 5 June 2008, the Panel was advised of a subsequent factual development. By way of his letter of 4 June 2008, counsel for Mr. Thompson advised that he had learned on 30 May 2008 that Mr. Thompson had withdrawn from the University of Arkansas. This was followed by a second letter from counsel dated 10 June 2008 advising that Mr. Thompson was pursuing enrollment at a junior college to continue his education and track career.

#### 4. PROCEDURAL BACKGROUND OF THESE PROCEEDINGS

4.1 On 1 February 2008, USADA notified WADA that the AAA Arbitrator had issued his award on 31 January 2008. WADA submitted its Notice of Appeal against the AAA Award pursuant to

<sup>2</sup> AAA Award, pp. 6-8.

<sup>3</sup> AAA Award, p. 13.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 6 -

Rule 60(9) of the IAAF Rules on 20 February 2008. In its Notice of Appeal, the Appellant appointed Professor Richard McLaren as an arbitrator.

4.2 On 25 February 2008, the CAS acknowledged receipt of the Statement of Appeal and communicated copies to the USADA, the First Respondent, and Mr. Eric Thompson, the Second Respondent.

4.3 On 26 February 2008, the CAS communicated a copy of the Statement of Appeal to the IAAF.

4.4 On 27 February 2008, USADA's General Counsel entered an Appearance and advised that the USADA had elected not to appeal the arbitrator's decision and, therefore, it had decided not to become actively involved in this matter and would not seek to be involved in the appointment of an arbitrator, the filing of an appeal brief or take any position with respect to scheduling issues. Counsel also advised that if USADA changed its position it would promptly notify the CAS. Finally, counsel requested that USADA be copied on all correspondence and filings relating to this appeal and be provided with a copy of the final award.

4.5 On 3 March 2008, counsel for Mr. Thompson wrote to advise that he and Mr. Thompson had only just received the Notice of Appeal. Mr. Thompson went on to appoint Mr. Jeffrey Benz as an arbitrator.

4.6 On 17 March 2008, WADA filed its Appeal Brief.

4.7 On 25 March 2008, USADA confirmed its earlier advice that it did not intend to file an answer in response to the Statement of Appeal.

4.8 On 10 April 2008, the CAS appointed Mr. Henri Alvarez as the President of the Panel in this matter.

4.9 On 14 April 2008, the CAS advised the parties of the appointment of the President and the constitution of the Panel.

4.10 On 18 April 2008, Mr. Thompson, filed his answer which was entitled "The Respondent, Eric Thompson's Pre-Hearing Brief". In his brief, Mr. Thompson submitted that a hearing was not required and would be unduly burdensome on him.

4.11 On 23 April 2008, at the request of the Panel, the CAS Court Office enquired of the parties as to whether they believed a hearing would be required in this matter.

4.12 On 30 April 2008, counsel for the Appellant advised that the Appellant preferred that no hearing be held and that the Panel issue an award solely on the basis of the parties' written submissions.

4.13 On 8 May 2008, the Panel advised the parties that it had noted their respective positions with regard to the holding of a hearing and that it was of the view that it could proceed to determine the appeal in this matter on the basis of the written submissions received. The Panel also invited the parties to comment, on or before 15 May 2008, whether they believed there was any need for further written submissions prior to the Panel's determination of the appeal.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 7 -

- 4.14 On 13 May 2008, Mr. Thompson advised that no further briefing was necessary.
- 4.15 On 15 May 2008, WADA advised the Panel that it did not believe that further briefing was necessary and that the Panel could proceed to determine the appeal on the basis of the written submissions filed by the parties.
- 4.16 On 21 May 2008, the CAS Court Office advised the parties that the Panel had decided not to convene an oral hearing and that it would make its determination and issue its award on the basis of the parties' written submissions.
- 4.17 On 4 June 2008, counsel for Mr. Thompson advised the CAS Court Office that they had learned on 30 May 2008 that Mr. Thompson had withdrawn from the University of Arkansas. The CAS Court Office communicated this information to the Panel and counsel for the other parties on 5 June 2008.
- 4.18 On 10 June 2008, the Panel issued a general procedural order which was agreed and signed by the parties and copies were returned to the CAS Court Office.
- 4.19 On 11 June 2008, the Panel invited comments from the parties in respect of counsel for Mr. Thompson's letter of 4 June 2008 and whether the information contained in that letter affected the positions expressed in their submissions to the Panel.
- 4.20 On the same date, the Panel received a further letter from counsel for Mr. Thompson in which he advised that he had learned that Mr. Thompson was pursuing enrollment at a junior college to continue his education and track career. Counsel also advised that he did not know the reasons for Mr. Thompson's withdrawal from the University of Arkansas and that, in any event, release of that information would require Mr. Thompson's permission.
- 4.21 On 12 June 2008, the Panel received comments from counsel for Mr. Thompson in which he advised that Mr. Thompson's withdrawal from the University of Arkansas did not change the *fundamental facts, the issues before the Panel nor the arguments made on behalf of Mr. Thompson.*
- 4.22 On 13 June 2008, the Panel received comments from counsel for WADA advising that Mr. Thompson's enrollment and withdrawal from the University of Arkansas and his enrollment at a junior college were not relevant to the issues before the Panel.

## 5. SUMMARY OF THE PARTIES' POSITIONS

### 5.1 WADA

5.1.1 WADA takes the position that pursuant to Rule 40.3 of the IAAF Rules, Mr. Thompson has the onus of proving that he bears no significant fault or significant negligence in order to obtain a reduction of the duration of the suspension of two years provided for in Rule 40.1(a) of the IAAF Rules. WADA says that a reduction of the applicable period of suspension is meant to occur only in cases where truly exceptional circumstances exist. In this case, the circumstances are very different from those limited cases in which the period of suspension has been reduced. Mr. Thompson knew he was taking illegal drugs and neither his relative youth and experience nor his reliance on his coach can be considered as valid mitigating factors. According to WADA, Mr. Thompson took a risk in consuming a prohibited substance and his ignorance as to the effects of the drug is not a circumstance mitigating his

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 8 -

fault or negligence. WADA submits that accepting the reduction of the period of suspension granted by the AAA Arbitrator would create a loophole which would permit athletes found guilty of a doping offence to obtain an unwarranted reduction of the otherwise applicable sanction.

5.1.2 WADA submits that it has a right of appeal pursuant to Rules 60.9 and 60.17 of the IAAF Rules and Article 10(c) of the USADA Protocol and that its appeal has been submitted within the applicable time limits.

5.1.3 In its comments addressing Mr. Thompson's withdrawal from the University of Arkansas, WADA took the position that the consequences arising from a period of ineligibility for an athlete did not constitute exceptional circumstances which could justify a reduction of the otherwise applicable sanction for a doping offence. As a result, Mr. Thompson's withdrawal from the University of Arkansas as well as his enrollment at a junior college are not relevant.

## 5.2 USADA

5.2.1 Although duly notified, USADA advised that it would not take an active role in this matter. Accordingly, it has not taken any position with respect to the appeal in this matter.

## 5.3 Mr. Thompson

5.3.1 Mr. Thompson argues that he properly discharged the onus upon him to show that there were exceptional circumstances such that he bore no significant fault or no significant negligence for his violation of the IAAF Rules, pursuant to IAAF Rule 40.3. He says that he demonstrated how the prohibited substance entered his system and that there was no significant fault or significant negligence on his behalf in the unique facts and circumstances of this case. His personal background, age, isolation and naiveté, lack of experience, lack of intent to enhance his performance and lack of guidance and support from his coaches all contribute to create the exceptional circumstances which justify the reduction of his suspension, as found by the AAA Arbitrator.

5.3.2 Mr. Thompson also says that he has been cooperative throughout, offered a full explanation of the circumstances of the taking of the prohibitive substance, voluntarily accepted a provisional suspension and accepted responsibility for his mistake. Further, the suspension imposed has already severely affected him and the prospect of losing his college scholarship at the University of Arkansas and any opportunity for higher education is unduly harsh. Imposing a two year suspension would remove any incentive for athletes who make errors in judgment to admit their errors and cooperate with anti-doping authorities.

5.3.3 Mr. Thompson argues that the one year suspension imposed by the AAA Arbitrator is proportional to the nature of his violation and compares favourably to suspensions imposed in other CAS cases. A two year suspension would cause him disproportionate harm in that it would likely end his opportunity to retain his scholarship at the University of Arkansas and thus a university education and his future career as an athlete. He says that a lengthier suspension will also severely affect his ability to obtain an athletic scholarship from another university. As indicated above, since submitting his papers to the Panel, Mr. Thompson's counsel has advised the Panel and the other parties that as of 30 May 2008, Mr. Thompson has withdrawn from the University of Arkansas.

5.3.4 Mr. Thompson also argues that the decision of the AAA Arbitrator should be given significant deference. He submits that IAAF Rule 60.26 should be construed to permit interference



with the AAA panel's decision only in the case where WADA proves that the decision was clearly erroneous or was the result of a procedural irregularity. He submits that a number of panels in previous cases have given deference to lower panel decisions.

5.3.5 Mr. Thompson also argues that the doctrines of double-jeopardy and *res judicata* are relevant because WADA has advanced no new evidence or arguments in this appeal. While he accepts that these doctrines do not bar an appeal in this case, he submits that they are legal principles which should be considered and applied by the Panel in this case.

5.3.6 In his comments relating to Mr. Thompson's withdrawal from the University of Arkansas, counsel submitted that Mr. Thompson's withdrawal from the University and enrollment at a junior college did not affect the basic facts, the relevant issues and Mr. Thompson's position in these proceedings. In his submission, whether Mr. Thompson is enrolled at the University of Arkansas or attempting to enroll and obtain an athletic scholarship from a second university or a junior college, the effect of a two-year suspension will be similar in that he will very likely be unable to attend a college or university and earn a degree. In either case, a two-year suspension would significantly reduce his eligibility to compete for a school and thus make it extremely unlikely that he could obtain a scholarship which would permit him to pursue a college education.

## 6. JURISDICTION AND APPLICABLE LAW

6.1 The jurisdiction of the CAS in this matter is undisputed and derives from Rule 60 of the IAAF Rules which provides, in relevant part, as follows:

### IAAF Rule 60: Disputes

#### Appeals

9. All decisions subject to appeal under these Rules, whether doping or non-doping related, may be appealed to CAS in accordance with the provisions set out below. All such decisions shall remain in effect while under appeal, unless determined otherwise (see Rules 60.23-24 below).

10. ...

(b) Where an athlete accepts a Member's decision that he has committed an anti-doping rule violation but seeks a review of the Doping Review Board's determination under Rule 38.18 that there are no exceptional circumstances in the case justifying a reduction of the period of ineligibility to be served.

15. In any case which does not involve International-Level athletes (or their athlete support personnel), the parties having the right to appeal a decision to the national level review body shall be as provided for in the rules of the Member, but shall include at a minimum:

- (a) the athlete or other person the subject of the decision being appealed;
- (b) the other party to the case in which the decision was rendered;
- (c) the Member.

The IAAF and WADA (in doping-related cases only) shall have the right to attend any hearing before the national-level review body as an observer. The IAAF's attendance at a hearing

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 10 -

in such capacity shall not affect its right to appeal the decision of the national level review body to CAS in accordance with Rule 60.16 below.

17. If, however, in cases not involving International-Level athletes (or their athlete support personnel), the rules of a Member provide for the right of the IAAF and WADA (in doping-related cases only) to appeal a decision direct to CAS rather than to the national level review body as in Rule 60.15 above, provided the CAS appeal is conducted in accordance with the provisions of Rule 60 below, the CAS decision shall be final and binding upon the athlete, the Member, the IAAF and WADA and no further appeal to CAS shall thereafter be made.

26. All appeals before CAS (save as set out in Rule 60.27 below) shall take the form of a re-hearing de novo of the issues raised by the case and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound.

27. Where the appeal to CAS in a doping-related case is made pursuant to Rule 60.10(b), or is pursuant to Rule 60.10(a) and the athlete seeks as part of the appeal a review of the Doping Review Board's determination on exceptional circumstances, the hearing before CAS on the question of exceptional circumstances shall be limited to a review of the materials before the Doping Review Board and to its determination. The CAS Panel will only interfere with the determination of the Doping Review Board if it is satisfied:

- (a) that no factual basis existed for the Doping Review Board's determination; or
- (b) the determination reached was significantly inconsistent with the previous body of cases considered by the Doping Review Board, which inconsistency cannot be justified by the facts of the case; or
- (c) that the determination reached by the Doping Review Board was a determination that no reasonable review body could reach.

28. In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.

6.2 Article 10(c) of the USADA Protocol confirms that final decisions by the AAA Arbitrator may be appealed to CAS by WADA pursuant to Article 13 of the World Anti-Doping Code (the "WADA Code"). Article 10(c) of the USADA Protocol reads as follows:

10. Results Management/Adjudication

...

(c) The final decision by the AAA/CAS arbitrator(s) may be appealed to the Court of Arbitration for Sport ("CAS") as set forth in Article 13 of Annex A. The appeal procedure set forth in Article 13 of Annex A shall apply to all appeals not just appeals by International-Level athletes or other persons. A CAS appeal shall be filed with the CAS Administrator, the CAS hearing will automatically take place in the U.S. and CAS shall conduct a de novo review of the matter on appeal which, among other things, shall specifically include the power to increase, decrease or void the sanctions imposed by the previous AAA/CAS Panel. Otherwise the regular CAS appellate rules apply. The decision of CAS shall be final and binding on all parties and shall not be subject to further review or appeal.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 11 -

6.3 Further, Article R47 of the Code of Sports-Related Arbitration (the "Code") provides as follows:

**R47: Appeal**

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

6.4 With respect to the scope of this Panel's review, Article R57 of the Code provides as follows:

**R57: Scope of Panel's Review Hearing**

The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply.

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise.

If any of the parties is duly summoned yet fails to appear, the Panel may nevertheless proceed with the hearing.

6.5 The USA Junior National Track & Field Championship in which Mr. Thompson participated was organized by USA Track & Field Inc, which acts as the IAAF member organization in the USA. Article 30(1) of the IAAF Rules provides as follows:

**Rule 30: Scope of the Anti-Doping Rules**

1. These Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to athletes, athlete support personnel and other persons who participate in the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation, accreditation or participation in their activities or competitions.

These were the Rules applied by the AAA Arbitrator below. The parties also accepted that the mandatory provisions of the WADA Code apply.

6.6 The principal IAAF Rules of relevance in these proceedings are the following:

**Rule 32: Anti-Doping Rule Violations**

1. Doping is strictly forbidden under these Anti-Doping Rules.
2. Doping is defined as the occurrence of one or more of the following anti-doping rule violations:

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 12 -

(a) the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids. All references to a prohibited substance in these Anti-Doping Rules and the Procedural Guidelines shall include a reference, where applicable, to its metabolites or markers.

(i) it is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they are responsible for any prohibited substance found to be present in their bodies. It is not necessary that intent, fault, negligence or knowing use on an athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a).

(ii) except those prohibited substances for which a reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a prohibited substance in an athlete's sample shall constitute an anti-doping rule violation.

**Rule 33: Standards of Proof of Doping**

1. The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred under these Anti-Doping Rules.

2. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing body, bearing in mind the seriousness of the allegation which is made. This standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

3. Where these Anti-Doping Rules place the burden of proof on an athlete, athlete support personnel or other person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

**Rule 38: Disciplinary Procedures**

...

**Exceptional Circumstances**

12. All decisions taken under these Anti-Doping Rules regarding exceptional circumstances must be harmonised so that the same legal conditions can be guaranteed for all athletes, regardless of their nationality, domicile, level or experience. Consequently, in considering the question of exceptional circumstances, the following principles shall be applied:

(i) it is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they shall be held responsible for any prohibited substance found to be present in their bodies (see Rule 32.2(a)(i) above).

(ii) exceptional circumstances will exist only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

(iii) taking into consideration the athlete's personal duty in Rule 38.12(i) above, the following will not be regarded as cases which are truly exceptional: an allegation that the prohibited substance or prohibited method was given to an athlete by another person without his knowledge, an allegation that the prohibited substance was taken by mistake, an allegation that the prohibited substance was due to the taking of contaminated food supplements or an allegation that medication was prescribed by athlete support personnel in ignorance of the fact that it contained a prohibited substance.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 13 -

(iv) exceptional circumstances may however exist where an athlete has provided substantial evidence or assistance to the IAAF, his National Federation or other relevant body which has resulted in the IAAF, his National Federation or other relevant body discovering or establishing an anti-doping rule violation by another person involving possession (under Rule 32.2(f)), trafficking (under Rule 32.2(g)) or administration to an athlete (under Rule 32.2(h)).

13. The determination of exceptional circumstances in cases involving International-Level athletes shall be made by the Doping Review Board (see Rule 38.17 below).

14. If an athlete seeks to establish that there are exceptional circumstances in his case, the relevant tribunal shall consider, based on the evidence presented, and with strict regard to the principles set out in Rule 38.12 above, whether, in its view, the circumstances in the athlete's case may be exceptional.

**Rule 40: Sanctions against Individuals**

1. If any person commits an anti-doping rule violation under these Anti-Doping Rules, he shall be subject to the following sanctions:

(a) for a violation under Rules 32.2(a), (b) or (f) (prohibited substances and prohibited methods), except where the prohibited substance is a specified substance in a case under Rule 40.5 below, or Rule 32.2(i) (competing whilst suspended or ineligible):

(i) first violation: for a minimum period of two years' ineligibility.

(ii) second violation: ineligibility for life.

...

3. If, in a case involving an anti-doping rule violation under:

(a) Rule 32.2(a) (presence of a prohibited substance);

(b) Rule 32.2(b) (use of a prohibited substance or prohibited method);

(c) Rule 32.2(c) (refusal or failure to submit to doping control);

(d) Rule 32.2(h) (administration of a prohibited substance or prohibited method);

or

(e) Rule 32.2(i) (competing whilst suspended or ineligible)

the relevant tribunal of the Member decides (where applicable, having referred the matter to the Doping Review Board for its determination under Rule 38.16 above) that there are exceptional circumstances such that the athlete or other person bears no significant fault or no significant negligence for the violation, the period of ineligibility may be reduced but the reduced period may not be less than half the minimum period of ineligibility otherwise applicable. If the otherwise applicable period is a lifetime, the reduced period under this Rule may be no less than 8 years. When a prohibited substance is detected in an athlete's sample in violation of Rule 32.2(a) (presence of a prohibited substance), the athlete must establish how the prohibited substance entered his system in order to have his period of ineligibility reduced.

6.7 The expressions "no fault or no negligence" and "no significant fault or no significant negligence" are defined in the IAAF Rules as follows:

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 14 -

*No Fault or No Negligence*

When exceptional circumstances have been determined in an athlete's case under Rule 38 to demonstrate that the athlete did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered a prohibited substance or prohibited method,

*No Significant Fault or No Significant Negligence*

When exceptional circumstances have been determined in an athlete's case under Rule 38 to demonstrate that the athlete's fault or negligence, when viewed in the totality of the circumstances, was not significant in relationship to the anti-doping rule violation.

6.8 The IAAF Rule at the heart of the dispute between the parties in this case, Rule 40.3, is based on and consistent with Article 10.5.2 of the WADA Code which reads as follows:

**10.5.2 No Significant Fault or Negligence**

This article 10.5.2 applies only to anti-doping rule violations involving article 2.1 (presence of *Prohibited Substance or its Metabolites or Markers*). Use of a *Prohibited Substance or Prohibited Method* under article 2.2, failing to submit to Sample collection under article 2.3 or administration of a *Prohibited Substance or Prohibited Method* under article 2.8. If an *Athlete* establishes in an individual case involving such violations that he or she *Bears No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than eight years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen* in violation of article 2.1 (presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.

6.9 "No fault or negligence" is defined in Appendix 1 of the WADA Code as:

The *Athlete's* establishing that he or she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the *Prohibited Substance or Prohibited Method*.

"No significant fault or negligence" is defined as:

The *Athlete's* establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

**7. ADMISSIBILITY**

7.1 The admissibility of WADA's appeal was undisputed. The procedural background set out above indicates that the applicable time limits were met.

**8. DISCUSSION**

8.1 The question the Panel must determine in this appeal is whether Mr. Thompson demonstrated that he bore no significant fault or no significant negligence for the doping violation he committed. Pursuant to the IAAF Rules, the athlete bears the onus of proving on a balance of

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 15 -

probability that when viewed in the totality of the circumstances his fault or negligence was not significant in relationship to the anti-doping rule violation. The athlete must also establish how the prohibited substance entered his system in order to have his period of ineligibility reduced.

8.2 The IAAF Rules do not provide any details or examples to explain or illustrate the standard of no significant fault or no significant negligence. However, the IAAF has accepted the WADA Code and the language of Rule 40.3 of the IAAF Rules is substantially similar to Article 10.5.2 of the WADA Code. As a result, the official commentary on the WADA Code can be, and has been, viewed as providing a guideline as to how the expression "significant fault or significant negligence" should be interpreted. While the commentary is not binding upon this Panel, it does provide a helpful body of information which can be considered when interpreting the provisions of the WADA Code and similar rules based upon it. The Panel notes that a number of the CAS cases relied upon by the parties have made reference to Article 10.5.2 of the WADA Code and the commentary when considering the interpretation of "significant fault or significant negligence" in the context of a number of different sets of rules.

8.3 The commentary on Article 10.5.2 of the WADA Code recognizes that there must be some opportunity to consider the unique facts and circumstances of each particular case in imposing sanctions. It stresses that Article 10.5.2 is applicable in "truly exceptional" cases and provides a number of examples where an athlete could be found to bear no, or no significant, fault or negligence. These examples include a mislabelled or contaminated vitamin or nutritional supplement; the administration of the prohibited substance by the athlete's physician or trainer without disclosure to the athlete; or sabotage of the athlete's food or drink by a spouse, coach or other person in the athlete's circle of associates. The examples given are clearly stated to be illustrative. The commentary does not purport to draw up an exhaustive list of circumstances in which no significant fault or negligence may be found.

8.4 The parties cited a number of cases in support of their arguments. WADA cited the case of *WADA v FAW and James*, CAS 2007/A/1364 (where the CAS panel declined to reduce the two year suspension of a professional football player whose in-competition urine test on the occasion of a Welsh Premier Football League match tested positive for benzoyllecgonine), and *Knauss v. FIS*, CAS 2005/A/847 (in which an experienced world-class skier aware of the issue of doping and the risk of using nutritional supplements had his reduced suspension of 18 months upheld on appeal). In the first case, the appeal panel held that the athlete's apparent inability to resist peer pressure or his ignorance as to the effect of drugs were not valid mitigating circumstances. In the latter, the appeal panel held that the failure of the panel below to take into consideration the athlete's age (34), his personal sporting career or the particularities of his sport, had not inflicted such an extraordinary disadvantage on the athlete as to infringe the doctrine of proportionality, as restricted by the WADA Code and the FIS Rules.

8.5 On the other hand, Mr. Thompson cited a number of cases where CAS panels accepted a number of factors as part of the exceptional circumstances analysis in determining whether "no significant fault or no significant negligence" had been demonstrated: *Squizzato v. FINA*, CAS 2005/A/830 (no intent to dope or to derive a competitive advantage, young age and lack of experience all considered); *USADA v. Fuentes*, AAA 30 190 00759 04 (age and experience not accepted as factors in the case of a 31 year old professional cyclist); *USADA v. Piasecki*, AAA No. 30 190 00358 07 (lack of the intention to dope or lack of competitive advantage are relevant factors but not applicable in the case of a 25 year old elite wrestler and member of a national Olympic team). Mr. Thompson also points

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 16 -

to other factors such as his lack of education and knowledge about prohibited substances and drug testing, his isolation and lack of support or guidance from his coaches or others, and submits that they all find support in previous cases.

8.6 In previous cases addressing the question of no significant fault or negligence, these various factors have received different application, if any, depending on the specific, relevant circumstances of each case viewed in their totality. From its review of the cases cited by the parties, the Panel also notes that the relevant factors cannot be applied automatically but, rather, must be considered in the context of all of the relevant circumstances in order to determine whether they are relevant to the extent of the athlete's fault or negligence.

8.7 For example, the factor of the age of the athlete is often raised, and is relied upon by Mr. Thompson in this case. However, in the *Squizzato v. FINA* case, where the athlete was only 17 at the time of her doping offence, the panel found that the athlete had been competing for ten years by that time and that it was not uncommon to have 17 year old athletes compete at the highest level in competitive swimming. In the case of *Anna Stylianou v. FINA*, CAS 2003/A/447, the panel found that age did not fall within the category of "exceptional circumstances" where the 16 year old athlete had significant international and Olympic experience and was well aware of the risks regarding vitamins and food supplements. In the case of *Karatancheva v. International Tennis Federation*, CAS 2006/A/1032, the panel found that neither the Tennis Anti-Doping Program or the WADA Code deemed age to be a distinguishing factor in terms of anti-doping duties and responsibilities and that therefore, there is no automatic exception based on age. The panel went on to find that the athlete, who was aged 15 at the relevant time, and was highly ranked on the Association of Tennis Professionals tour, was intelligent and multi-lingual and personally capable of understanding and complying with anti-doping requirements. However, she took little interest in any aspects of anti-doping and relied on her father in managing her nutritional supplements.

8.8 Nevertheless, age and experience have been considered on a number of occasions and may be relevant factors depending on the specific circumstances of a particular case. In this respect, the Panel notes that the revised comments to Articles 10.5.1 and 10.5.2, WADA Code Amendments, Code Version 3.0 (2007) contain a new additional comment which indicates that while minors are not given special treatment in determining the applicable sanction, youth and lack of experience are relevant factors to be assessed in determining the athlete's fault or negligence under Article 10.5.2 of the WADA Code. While this amendment to the commentary has not yet come into effect, it does provide support for the relevance of these factors as part of the consideration of all of the circumstances of a specific case.

8.9 In sum, in determining whether a period of ineligibility may be reduced pursuant to Rule 40.3 of the IAAF Rules, the Panel must determine whether exceptional circumstances exist which, when viewed in the totality of the circumstances of the specific case, demonstrate that the athlete's fault or negligence was not significant.

8.10 In this case, the AAA Arbitrator clearly found that Mr. Thompson had established how the prohibited substance entered his system. Mr. Thompson gave a forthright account of how he came to take cocaine at a high school graduation party on the evening of 19 June 2007. The expert toxicology evidence confirmed that Mr. Thompson's test results were consistent with his explanation. Therefore, the threshold for consideration of a reduction of the period of suspension pursuant to IAAF Rule 40.3 was met.



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 17 -

8.11 Mr. Thompson has submitted that this Panel owes the award of the AAA Arbitrator significant deference. In their submissions, counsel for Mr. Thompson say that this Panel should substitute its decision for that of the AAA Arbitrator only if it finds that his decision was "clearly erroneous" or "the result of a procedural irregularity". IAAF Rule 60.26 provides that appeals before CAS shall take the form of a re-hearing *de novo* of the issues raised by the case and that the CAS panel may substitute its decision for that of the relevant tribunal below where it considers that decision to be erroneous or procedurally unsound. On its plain language, the standard does not contain the qualification "clearly" suggested by counsel for Mr. Thompson, nor any similar qualification.

8.12 Further, it is relevant to note that this case does not involve an International-Level athlete. Therefore, pursuant to IAAF Rules 60.15 and 60.17, WADA was entitled to appeal the decision of the AAA Arbitrator directly to CAS rather than to the national level review body. In the case of an International-Level athlete, Rule 60.27 provides a different standard for the review of the Doping Review Board's determination on exceptional circumstances. This standard is clearly deferential in nature and provides that the CAS panel will only interfere with the determination of the Doping Review Board if it finds that no factual basis existed for the determination, the determination reached was significantly inconsistent with previous case law considered by the Doping Review Board or that the determination was one that no reasonable review body could reach. That standard does not apply in this case where the exceptional circumstances analysis was performed by the AAA Arbitrator without referral to the IAAF Doping Review Board pursuant to IAAF Rules 38.13 and 38.16.

8.13 In this case, this Panel must determine whether the AAA Arbitrator correctly applied IAAF Rule 40.3 to the circumstances of the case before him. Where a CAS panel conducts a re-hearing *de novo* of the case and conducts a hearing for the examination of the parties, witnesses and experts as well as for oral arguments (pursuant to IAAF Rule 60.26 and Code Article R57), there may be little, if any, basis for deferring to the factual determinations of the panel below. However, where no hearing is conducted and no new evidence is admitted, the appeal panel will necessarily defer to the lower panel's factual findings.

8.14 This is particularly so in this case where the parties agreed that no hearing was necessary and were of the view that the Panel should determine the appeal on the basis of written submissions. In this case, the AAA Arbitrator made a number of important factual findings relating to Mr. Thompson's credibility, experience and state of mind on the basis of his oral examination and demeanour. None of the parties questioned any of the factual findings or stipulated facts set out in the AAA Arbitrator's award. In these circumstances, the Panel must accept and adopt the AAA Arbitrator's factual findings as set out in his award.

8.15 The Panel is unable to accept Mr. Thompson's submissions with respect to the doctrines of double jeopardy and *res judicata*. This proceeding is an appeal process specifically provided for in the IAAF Rules and the Code of Sports-Related Arbitration in which the doctrines cited by counsel have little, if any, place and the Panel was not referred to any CAS cases applying such doctrines to proceedings similar to this one.

8.16 Turning to the merits of the decision below, the AAA Arbitrator made the findings of fact set out above at paragraph 3.1 which this Panel must take to be uncontested as a matter of procedure. Notably, he made the following findings:

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 18 -

- Mr. Thompson is a naïve young man who had never competed in any athletic events at a level higher than Illinois high school sports. The events in which he competed did not include testing for doping, nor were doping rules a subject of instruction as part of his school sports program.
- Although Mr. Thompson's high school did conduct limited monthly, random doping testing of a few students participating in extracurricular activities, Mr. Thompson was never tested as part of that program.
- On the spur of the moment in June 2007, a few days before the track meet in question, Mr. Thompson's coaches decided to enter him in the high jump event at the USA Junior National Track and Field Championship.
- Two days before the competition, Mr. Thompson contributed to the group purchase of cocaine and consumed a small amount of cocaine once.
- Mr. Thompson was a credible witness and was contrite. This was the only occasion in his life on which he consumed any prohibited drug.
- Neither of Mr. Thompson's coaches had any experience coaching participants in national track meets and neither they nor Mr. Thompson had read any materials on the Junior National Championship or USADA websites concerning doping testing. Mr. Thompson first read materials which indicated that there would be random doping testing at the competition the day before while travelling to the competition.
- Mr. Thompson's best jump at the competition was significantly below his prior jumping achievements.
- There was no suggestion that Mr. Thompson ingested cocaine with any intention to influence his performance at the Junior National Championship.
- The expert scientific evidence established that while cocaine could have a stimulant effect within a period of minutes or up to an hour after ingestion, the presence of the metabolite of cocaine found in Mr. Thompson's body at the time of testing could have had no positive effect on his performance.
- On the basis of these and his other factual findings, the AAA Arbitrator concluded that the circumstances of this case were different from any other reported case submitted to him. Although Mr. Thompson had committed a doping violation, was responsible for his conduct and should be sanctioned, the AAA Arbitrator also found that, in the totality of the circumstances, Mr. Thompson bore no significant fault or no significant negligence for the violation.

8.17 The AAA Arbitrator's first conclusion that the intentional ingestion of cocaine, no matter how limited, resulting in a positive doping test, constitutes a doping violation requiring sanction is clearly correct. Use of cocaine is a dangerous and legally prohibited practise and Mr. Thompson accepts that he was responsible for this conduct.

8.18 The AAA Arbitrator's second conclusion that Mr. Thompson bore no significant fault or no significant negligence was based on the totality of the circumstances which he found to be exceptional. In his award, he mentioned two factors of particular relevance: Mr. Thompson's relative

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 19 -

youth and inexperience and the circumstances of his reliance on his high school coaches. These factors, combined with all of the other relevant circumstances led him to the conclusion that Mr. Thompson's fault or negligence was not "significant" in the passage quoted above at paragraph 3.3 of this Award.

8.19 In this Panel's view, the particular circumstances in this case do amount to exceptional circumstances which permit a reduction of the otherwise applicable period of ineligibility of two years. However we arrive at the same conclusion for somewhat different and more comprehensive reasons than those of the AAA Arbitrator.

8.20 At the relevant time, Mr. Thompson was a naïve and inexperienced high school athlete. He had never competed at the international level and this was his first competition at the national level. Unlike the other cases submitted to the Panel, Mr. Thompson had not participated in any formalized program at either the national or international level dealing with doping and drug testing nor did he have the benefit of receiving advice and warnings from any recognized sports organization to explain the nature and risks of applicable anti-doping rules. The high school events in which he competed did not include testing for doping and doping rules were not a subject of instruction as part of his school sports program.

8.21 In addition to his complete lack of experience, Mr. Thompson was not at the relevant time part of a continuing coaching program and received no guidance with respect to doping and anti-doping testing from his high school coaches. Rather, at the end of the school year, at or about the time of Mr. Thompson's high school graduation, he and his former coaches decided on the spur of the moment to enter Mr. Thompson in the high jump event at the USA Junior National Track and Field Championship. The first time Mr. Thompson learned about doping testing at the championship was in the car on his way to the event. His coaches, who were by then his former high school coaches, did not themselves have any experience in anti-doping testing at the national or international level. They did not provide him with any detailed information or explanation regarding anti-doping rules and did no more than ask one conclusory question when Mr. Thompson raised the issue of testing at the championship. Mr. Thompson's failure to disclose to his coaches that he had consumed a small amount of cocaine the previous night was a poor decision representing a lack of judgment, but must be understood in the context of his youthful inexperience and his desire to please his former coaches by not telling them what he had done. In the Panel's view, Mr. Thompson's coaches failed him in that they did not provide him with any adequate information or guidance in respect of the applicable doping rules nor did they make any appropriate attempt to explore the issue and possible risks with him. While this may be understandable in view of their own lack of experience and knowledge and their lack of suspicion that Mr. Thompson had ever used drugs of any kind, it was clearly not the level of support that could be reasonably expected of them.

8.22 This context is important in assessing Mr. Thompson's consumption of cocaine. This occurred at a graduation party at the end of the school year. Mr. Thompson's motivation appears to have been an act of youthful exuberance and represented a momentary, albeit serious, indiscretion in a desire to join with his peers at a high school graduation party. He had no knowledge that cocaine was a prohibited substance in sport because of its potential stimulant effect and did not take the cocaine with any intention to influence his performance at the championship. The scientific evidence was clear that Mr. Thompson's ingestion of cocaine could not possibly have acted as a stimulant to enhance his performance. In the Panel's view, Mr. Thompson clearly lacked the knowledge and experience to understand the risk consuming cocaine at his graduation party represented in respect of his participation at the championship.

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 20 -

8.23 These factors, in the Panel's view, when considered in the totality of the specific and unusual circumstances of this case, justify the decision at first instance of a finding of exceptional circumstances and no significant negligence by Mr. Thompson. Therefore, this Panel reaches the same conclusions, although for broader and more fully articulated reasons.

8.24 In reaching this conclusion, the Panel has noted that at the relevant time Mr. Thompson was relatively young. However, the Panel does not believe that this factor on its own is relevant and the Panel is of the view that this factor does not give rise to any automatic exception. Rather, it is a series of factors: Mr. Thompson's complete lack of experience in doping matters and as a national or international athlete; lack of guidance and support from his coaches or others; lack of intention to influence or enhance his performance at the relevant time; and his relatively young age, all of which taken together in the factual context, which gives rise to the exceptional nature of this case and justifies supporting the conclusions of the AAA Arbitrator.

8.25 The Panel's review of the file and all the materials and submissions presented by the parties leads it to conclude that the AAA Arbitrator's unchallenged factual findings and conclusions were reasonable in all the circumstances and must be accepted by it. On the basis of these findings and all of the relevant circumstances, the Panel concludes that the AAA Arbitrator's determination that exceptional circumstances existed, permitting the reduction of Mr. Thompson's period of ineligibility, was justified.

8.26 With respect to the period by which the two year period of ineligibility was reduced by the AAA Arbitrator, neither party took the position that this Panel should set a period of ineligibility of between one and two years. Mr. Thompson accepts that the period of ineligibility of one year assessed by the AAA Arbitrator is appropriate. WADA's position was simply that the two year minimum period of ineligibility must apply. For the reasons set out in this Award, we would not alter the discretion exercised by the AAA Arbitrator in reducing the period of ineligibility to one year.

8.27 In reaching his decision to reduce Mr. Thompson's period of ineligibility to one year, the AAA Arbitrator makes no reference to the potential effects of a longer suspension upon his educational and career opportunities. In the Panel's view, this factor should not normally affect the determination of the applicable sanction, subject to a severe lack of proportionality. In this case, with the agreement of the parties, no hearing was held and no new evidence which might affect the factual findings made by the arbitrator was introduced. In light of these and the other circumstances described previously, the Panel finds the period of ineligibility determined by the arbitrator below to be appropriate and does not believe that it should interfere with the same. Accordingly, the Panel confirms the first instance conclusion that the minimum period of two years' ineligibility should be reduced to a period of ineligibility of one year.

8.28 As a result, the Panel dismisses WADA's appeal.

## 9. COSTS

9.1 Each of the parties has requested an award of costs. Mr. Thompson has requested the award of costs in his favour regardless of the outcome of this appeal. This position was advanced in his Pre-Hearing Brief on the premise that a hearing would be necessary.

Tribunal Arbitral de Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 21 -

9.2 Pursuant to Article R65 of the Code, the present appeal proceedings are without charge, subject to the minimum Court Office fee of CHF 500 payable pursuant to Article R65.2. The fees and costs of the arbitrators together with the cost of the CAS are borne by the CAS.

9.3 Pursuant to Article 65.3 of the Code, the Panel is required to decide which party shall bear the cost of the parties or the proportion in which the parties shall share these, taking into account the outcome of the proceedings and the conduct and financial resources of the parties. Having taken into account each of these factors and the nature and circumstances of this case, including the fact that no hearing was conducted, the Panel believes that it is reasonable for each party to bear its own costs and expenses incurred in this appeal.

\*\*\*\*\*

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1490 WADA v./ USADA & Thompson - 22 -

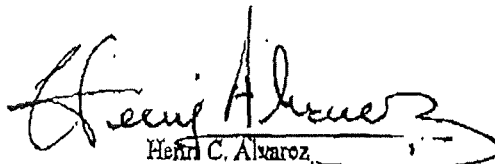
**ON THESE GROUNDS**

The Court of Arbitration for Sport rules:

1. The appeal filed by WADA on 20 February 2008 is dismissed.
2. This Award is pronounced without costs, except for the Court Office fee of CHF 500 (five hundred Swiss francs) paid by WADA , which is to be retained by the CAS.
3. Each party shall bear its own costs.

Done in Lausanne, 25 June 2008.

THE COURT OF ARBITRATION FOR SPORT

  
Henri C. Alvarez  
President of the Panel