

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT (“SAIDS”)

ANTI DOPING DISCIPLINARY COMMITTEE

ATHLETE: Mr Papa Peter Lekopa

SPORTS FEDERATION: South African Power Lifting Federation

DATE: 5 November 2015

PLACE OF HEARING: Rosebank Holiday Inn, Oxford Road, Johannesburg

DISCIPLINARY PANEL (“Panel”): Ms Corinne Berg (Chairperson)

DR Rob Collins (Medical Representative)

Mr Leon Fleiser (Sports Administrator)

PROSECUTOR: Mr Michael Murphy

ANTI-DOPING RULE VIOLATION: Anti-doping rule violation in terms of Article 2.1 of the SAIDS Anti-Doping Rules.

RULING

1. COMPOSITION OF PANEL

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended in 2006). SAIDS formally accepted the World Anti-Doping Agency (“WADA”) code in 2005. In so doing, SAIDS introduced anti-doping rules

and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation. These proceedings are governed by the 2015 SAIDS Anti-Doping Rules (“the Rules”).

This SAIDS Anti-Doping Disciplinary Panel (“the Panel”) has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so, to determine the sanction applicable.

2. PROCEDURAL MATTERS

The Athlete was not in attendance. Mr Murphy handed us an Affidavit deposed to by him, explaining why the athlete was not in attendance. Mr Murphy also handed the Panel Members a copy of the 2015 Prohibited List International Standard, as well as Heads of Argument.

3. THE CHARGE

The charge against the Athlete was set out in a letter addressed to the Athlete and sent to the Athlete’s National Federation, via email, on 12 June 2015. The National Federation only sent the letter to the Athlete, via email, on 17 June 2015.

The charge against the Athlete read as follows:

“Please be informed that the analytical report received from the South African Doping Control Laboratory confirmed the presence of the Anabolic Agents, 19-norandrosterone and 19-noreticholanolone in your urine sample (sample number: 2958911) provided during an in-competition test on 27 March 2015 at 20:40 after your event at the SA Raw Powerlifting Championships. Attached to this letter is a copy of the doping control form and laboratory report.”

4. EVIDENCE OF MR MURPHY

- 4.1 The following facts are confirmed in an Affidavit, dated 5 November 2015, deposed to by Mr Michael Alan Christopher Murphy:-

- 4.1.1 The Laboratory at the University of the Free State where the sample analysis was conducted is a WADA accredited Laboratory;
- 4.1.2 SAIDS has assessed and reviewed the process followed in relation to the sample collection, and is satisfied that it was dealt with in accordance with the applicable Rules and Standards as contemplated in the SAIDS and WADA Rules;
- 4.1.3 The Athlete was tested in-competition on 27 March 2015. Written notification of the violation was sent to the Athlete's Federation on 12 June 2015. The Federation sent the written notification to the Athlete on 17 June 2015;
- 4.1.4 The Athlete, despite having been afforded an opportunity to respond to the letter and/or to request that his B sample be analysed, elected not to;
- 4.1.5 The Athlete was accordingly charged with an anti-doping violation on 31 July 2015 and informed of the hearing to be held on 13 August 2015. The Athlete informed SAIDS that the allocated date was not suitable;
- 4.1.6 On 2 October 2015 SAIDS provided the Athlete with an alternative date, being 5 October 2015. Mr Fahmy Galant from SAIDS contacted the Athlete on 6 October 2015 in order to ask him whether he received the charge sheet and whether or not he will be attending. The Athlete confirmed that he received the documents but that he would not be attending the hearing;
- 4.1.7 Mr Galant requested the Athlete to confirm in writing that he will not be attending;
- 4.1.8 In light of the fact that the Athlete did not send Mr Galant written confirmation of the fact that he will not attend the hearing, Mr Murphy

sent a copy of the charge sheet to the Athlete via email on 2 November 2015;

4.1.9 In light of the fact that the Athlete failed to respond, Mr Murphy contacted the Athlete in order to ascertain whether he will be attending the hearing and whether he wanted Mr Murphy to raise any facts with the Panel;

4.1.10 The Athlete said that he had sent a text message to Mr Galant saying that he had consumed a product known as "Hellfire" and that that is all he can add.

4.1.11 Mr Galant advised Mr Murphy that he is not aware of the text message;

4.1.12 Mr Murphy then sent an email to the Athlete confirming the telephonic conversation.

4.2 Mr Murphy referred to the 2015 Prohibited List International Standard, which list confirms that the substances identified in the athlete's urine are prohibited, and listed under articles S1a and S1b of the said list. The prohibited substances are produced endogenously but are known as metabolites of nandrolone and will be constituted as an adverse analytical finding if it is found that the amount detected in the Athlete's urine exceeds the WADA limit.

5. APPLICABLE RULES

5.1 Article 2.1 provides as follows:-

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their

Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following:

presence of a prohibited substance or its metabolites or markers in the Athlete's A Sample ...

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the prohibited list, the presence of any quantity of a prohibited substance or its metabolites or markers in an athlete's sample shall constitute an anti-doping rule violation

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."

5.2 Article 3 provides as follows:-

"3.1 Burdens and Standards of Proof

SAIDS shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation, which 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. Where these Anti-Doping Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 ...

3.2.2 *WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted sample analysis and custodial procedures in accordance with the international standard for laboratories.*

The athlete or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred, which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the international standard for laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then SAIDS shall have the burden to establish that such departure did not cause the adverse analytical finding.

3.2.3 ...

3.2.4 ...

3.2.5 *The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the athlete or other person who is asserted to have committed an anti-doping rule violation based on the athlete's or other person's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or SAIDS. (The emphasis is added)."*

6. FINDING ON THE CHARGE

Due to the fact that the Athlete was not present at the hearing to dispute the presence of the prohibited substance identified in his urine sample, to answer questions from the Panel or SAIDS, or to furnish the Panel Members with good reason to consider any mitigating factors, the Panel has drawn an inference adverse to the Athlete, as we are entitled to do in terms of Rule 3.2.5. Accordingly, the Panel Members have determined that the Athlete is in fact guilty of the charge set out in paragraph 3 above.

7. SANCTION

7.1 Article 10 of the Rules read as follows:

“10.2.1 The period of Ineligibility shall be four (4) years where:-

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.

10.2.1.2 The anti-doping rule violation involves a specified substance and SAIDS can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two (2) years.”

7.2 The Athlete ingested the substance 19-norandestrone which is listed under articles S1a and S1b of the 2015 Prohibited List International Standard, as already stated above. Decision limits are set out and explained in the WADA Technical Documents of the 2015 Prohibited List. As is evident from the Technical Documents, the WADA decision limit for concentration of 19-norandestrone is 2.5 ng/ml. In this instance the Laboratory has reported 19 ng/ml. The amount of 19-norandestrone detected in the Athlete's urine sample exceeds the limit set by WADA.

7.3 Anabolic agents are not specified substances for purposes of the Anti-Doping Rules. This being the case there is no basis for discretion to be exercised as to whether to reduce the period of ineligibility.

7.4 Administrative action must be lawful, reasonable, and procedurally fair. For the Panel to be in a position to consider a reduction would require that the athlete in question to explain how the prohibited substance entered his body, that the prohibited substance was not used to enhance his performance and to establish that there was not intent. The Athlete has made no attempt at disputing the facts or to even attend the hearing so as to explain to the Panel Members how the prohibited substance entered his body.

7.5 The Athlete was provisionally suspended from the 12th of June 2015. Article 10.10.3.1 of the Anti-Doping Rules provides-

*If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person **shall** receive a credit for such period of Provisional Suspension against any period of Ineligibility, which may ultimately be imposed...*

8. CONCLUSION

8.1 The Panel Members have come to the conclusion that the period of ineligibility will be 4 (four) years. A reduction would be unlawful and unfairly discriminatory in relation to other athletes who are subject to the Anti-Doping Code and entitled to expect equal treatment under the law.

8.2 In terms of Article 10.10.3.1, the Athlete should be credited for the period of provisional suspension and accordingly, the sanction period should commence from 12 June 2015.

8.3 The Athlete's results achieved in the event (and any subsequent event before his suspension) shall be disqualified and all medals and prizes, if any, shall be forfeited.

8.4 The Athlete's sanction will be published in terms of Rule 14.3.

Dated at JOHANNESBURG on 10 November 2015.

Corinne Berg (Chairperson)

For and on behalf of the Panel Members:

Mr Rob Collins and Mr Leon Fleiser