

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT ("SAIDS")

SAIDS/2016/55

ATHLETE: Mr Brendan Coetzer

SPORTS FEDERATION: South African Rugby Union

DATE: 10 April 2017

PLACE OF HEARING: Southern Sun Bloemfontein

INDEPENDENT DOPING HEARING PANEL ("Panel"):

Ms Corinne Berg (Chairperson)

Dr Nicolas Theron (Medical Representative)

Mr Johan Volsteedt (Sport Administrator Representative)

PROSECUTOR:

Ms Wafeekah Begg

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 Independent Doping Hearing Panel (“the Panel”) has been appointed in accordance with Article 8 of the Rules, to adjudicate and to ascertain whether or not the Athlete has violated the said Rules, and if so, to determine the sanction applicable.

2. PROCEDURAL MATTERS

- 2.1 The Athlete elected not to have his “B Sample” tested.
- 2.2 The hearing was initially to proceed on 2 April 2017, however, the Athlete requested that the hearing be postponed to a later date.
- 2.3 The Athlete was unable to physically attend the hearing held on 10 April 2016 and accordingly, requested permission to dial in via skype.
- 2.4 The Athlete was unrepresented at the hearing. The Athlete did not deny the presence of the prohibited substance in his urine sample which urine sample was collected at an in-competition test on 8 October 2016, and thereafter sent to the WADA accredited laboratory in Qatar for testing.

3. THE CHARGE

- 3.1 The charge against the Athlete was set out in a letter, dated 1 December 2016, addressed to the Athlete. The letter sets out, in paragraph 4, that the analytical report received from the Laboratory in Qatar confirmed the presence of the prohibited substances, 19-norandrosterone and 19-noreticholanolone, which are metabolites of Nandrolone, in the Athlete's "Sample A" urine sample (sample number 4013498).

4. EVIDENCE OF THE SAIDS PROSECUTOR, MS WAFEEKAH BEGG

- 4.1 Ms Wafeekah Begg, the Prosecutor for SAIDS furnished the Panel Members with her Submissions.
- 4.2 Ms Begg then proceeded to present her case.
- 4.3 Ms Begg referred to Regulation 21 of the World Rugby Rules and Regulations which covers World Anti-Doping Rules. She referred to Rules 21.2, 21.2.1 and 21.2.1.1 which Rules set out what is considered to be an anti-doping rule violation. She also referred to Rule 21.3.1 which sets out the burden and standards of proof.
- 4.4 Ms Begg relied on Rule 21.10., and in particular, Rules 21.10.2.1 and 21.10.2.1.1, which Rules stipulate that the period of ineligibility shall be a period of four years if an anti-doping rule violation involves a non-specified substance, unless the Athlete can prove that the anti-doping rule violation was not intentional.
- 4.5 Ms Begg refers to the Rules relating to reduction of sanction (Rules 21.10.5.2 and 21.10.6) and she explains why these Rules are not applicable in this particular case.

- 4.6 Ms Begg also referred to cases where the circumstances are similar to this matter in that no evidence was provided to support the Athlete's case. These cases support the sanction period of four years.

5. EVIDENCE OF THE ATHLETE

- 5.1 The Athlete is a 24 (twenty-four) year old male, currently residing in Khatu. When he was tested in-competition on 8 October 2016, he was playing for the Sishen Rugby Club. The two rugby positions played by the Athlete were fly-half and full-back.
- 5.2 The Athlete referred to his letter addressed to SAIDS, dated 12 October 2016. In the letter, the Athlete explains that he was involved in an accident when he was 2 and ½ (two and a half) years old which accident was the cause of a bust colon, torn liver and damaged kidney. The Athlete alleges in his letter that he had to undergo numerous surgeries which were unsuccessful and due to the fact that the surgeries were unsuccessful, the doctors advised the Athlete not to play any contact sport.
- 5.3 In the letter, dated 12 October 2016, and also at the hearing, the Athlete set out his rugby background. The Athlete said that it was only when he started playing Provincial rugby that his weight became an issue. He was told by coaches that he needs to gain weight if he is going to continue and be successful in his rugby career. The Athlete told the Panel Members that he went to the Blue Bull Academy and thereafter, he played club Rugby in Port Elizabeth where he furthered his studies. In 2014 when the Athlete got a job in Kathu, he started playing for the Sishen Rugby Club.
- 5.4 The Athlete alleged that he pulled a hamstring in 2015 and stopped playing rugby in 2015 so as to allow his hamstring to heal. It was during this time that the Athlete's friend, a certain Mr Pieter Welgemoed, gave the Athlete Deca and told him that Deca will help him gain weight and that it will speed up the recovery and

the healing of his injuries. According to the Athlete, his friend does not play rugby but is very active in the gym.

- 5.5 The Athlete told the Panel Members that his father, who was also an avid rugby player when he was younger, was aware of the fact that he was using Deca. The Athlete explained to the Panel Members that Deca comes in a vile and the contents of the vile is injected into one's body. The Athlete claims that he used the Deca approximately 6 (six) to 8 (eight) times from the 15th of February 2016 up to the 8th of April 2016. He said that he normally injected 1ml (one millilitre) of the Deca into his body.
- 5.6 The Athlete said that he trusted his friend, Pieter, as he has known him all his life.
- 5.7 The Athlete alleges that he did not know what he was injecting into his body and said that he did not feel the need to research what he was injecting into his body because he trusted his friend.
- 5.8 The Athlete told the Panel Members that he was asked by the coach of the Sishen Rugby Club to play for the Sishen Rugby Club team in 2016. The Athlete told the Panel Members that he did not register and sign a Players' letter in 2015 but, that he did register and sign the Players' letter in 2016.
- 5.9 In the letter, dated 12 October 2016, the Athlete said that it was a week before the first game that he elected to stop using the Deca. During the hearing, the Athlete said that he stopped using the Deca as he was scared that the Deca would make him nauseous because in the past, when the Athlete used a USN pre-workout, he felt nauseous when he played rugby.
- 5.10 The Athlete said that the Deca did help speed up the healing process of his hamstring and that it also helped him gain weight.
- 5.11 The Athlete claims that the Deca was not used to enhance his performance and that if he had known that Deca was an anabolic steroid and prohibited in sport, he would not have used it.

- 5.12 The Athlete told the Panel Members that he also used a protein supplement from SA Supplements in 2016.
- 5.13 When the Athlete was asked by the Panel Members why he did not list Deca or the SA supplements protein shake on the Doping Control Form, he said that it was because he did not know that he had to list it as he did not use it on the day of the rugby game, when he was tested, and because he was not aware that Deca and SA supplements may be regarded as prohibited substances.
- 5.14 The Athlete told the Panel Members that he has never received any anti-doping education nor has he been tested by SAIDS in the past. However, the Athlete did confirm seeing fellow players being tested during Craven week but, he said he did not know what they were being tested for. The Athlete also said that he has heard of professional athletes who have tested positive for doping.
- 5.15 The Athlete also confirmed signing a Declaration at Craven week, which Declaration confirmed that the Athlete does not use any prohibited substances, however, he said that he did not read the Declaration. He merely signed it.
- 5.16 The Athlete often used the fact that he has lived in a small town most of his life as an excuse for not knowing anything about anti-doping and prohibited substances.
- 5.17 The Athlete showed remorse in his letter, dated 12 October 2016, and during the hearing held on 10 April 2016.
- 5.18 The Athlete told the Panel Members that he is no longer friends with Pieter. He also told the Panel Members that he will be more careful and that he will take the necessary precautions in the future.
- 5.19 The Athlete confirmed that he would be prepared to assist SAIDS in educating other athletes and that he will provide SAIDS with substantial assistance where possible.

6. APPLICABLE RULES

- 6.1 **Regulation 21 of the World Rugby Rules and Regulations which covers anti-doping.**
- 6.2 **SAIDS Anti-Doping Rules 2015.**
- 6.3 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."

6.4 Article 3 reads 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)."*

6.5 Applicable provisions of 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.

10.2.3 As set out in Article 10.2.3 of the Anti-Doping Rules 2015, the term "intentional" is meant to identify those athletes who cheat. The term, therefore, requires that the athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation, and manifestly disregarded that risk;

10.4 Elimination of Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears no significant fault or negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.10.1 Delays Not Attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, SAIDS may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

10.10.2 Timely Admission

Where an Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits that anti-doping rule violation after being confronted with the anti-doping rule violation by SAIDS, the period of ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation occurred...

10.10.3.1 Credit for Provisional Suspension or Period of Ineligibility

*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..."*

6. FINDING ON THE CHARGE

The Panel Members have determined that the Athlete is guilty of the charge.

7. SANCTION

- 7.1 The Athlete ingested the substances, 19-norandrosterone and 19-noreticholanolone which substances are **not** regarded as Specified Substances in terms of the definition of "Specified Substance" as set out in the SAIDS Rules.
- 7.2 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 no intent.
- 7.3 The Athlete was provisionally suspended, in terms of the SAIDS Rules, from the date of communication of the Athlete's analytical finding, being the 1 December 2016.
- 7.4 SAIDS charged the Athlete in terms of Article 2.1 and, in accordance with Article 10.2.1, the period of ineligibility should be 4 (four) years.
- 7.5 Article 10.2.2 allows for the reduction of the sanction period referred to in Article 10.2.1 from 4 (four) years to 2 (two) years if Article 10.2.1 is not applicable.
- 7.6 The Panel Members are of the view that the Athlete is not eligible for a reduction in terms of Rule 10.2.2. However, the Athlete did comply with SAIDS and did admit guilt and he is therefore, entitled to be credited for the period of his provisional suspension in terms of Rule 10.10.3.1
- 7.7 The Athlete did promptly admit the anti-doping rule violation and therefore, in terms of Rule 10.10.2, the period of ineligibility may start as early as the date of Sample collection.
- 7.8 The Panel Members are of the view that the Athlete should be banned for a period of 4 (Four) years from date of Sample collection, being 8 October 2016.

8. CONCLUSION

- 8.1 The Athlete admitted guilt due to the fact that he tested positive when his urine sample test report confirmed the presence of prohibited substances.

- 8.2 The Athlete presented his case and provided mitigating factors as to why he believes his sanction should be reduced.
- 8.3 The Athlete was unable to explain how the prohibited substances entered his body and furthermore, he was unable to prove that the prohibited substances did not enhance his performance in any way.
- 8.4 The Athlete never submitted a TUE form to SAIDS.
- 8.5 No evidence, in support of the Athlete's case, was provided by the Athlete. The Athlete was unable to prove that he used the prohibited substances unintentionally and that that he did not use the prohibited substances to enhance his performance.
- 8.6 The Athlete was negligent in that he failed to take all of the necessary precautions to avoid any prohibited substances from entering his body. Any other reasonable Athlete would have taken the necessary precautions to ensure that all supplements ingested are free from any prohibited substances.
- 8.7 The Panel Members have deliberated and have come to the conclusion that the period of ineligibility will be **4 (four) years, from date of sample collection**, being the **8th of October 2016** (in terms of Articles 10.10.2 and 10.10.3.1).
- 8.8 The period of ineligibility will accordingly, commence from **8 October 2016** and will come to an end on **7 October 2020**.
- 8.9 In terms of Article 10.8 the Athlete's results achieved in the event (and any subsequent events from sample collection and before his suspension) shall be disqualified and all medals and prizes, if any, shall be forfeited.
- 8.10 The Athlete's sanction will be published in terms of Rule 14.3.

Dated at JOHANNESBURG on the 20th of March 2017.



Corinne Berg (Chairperson)
For and on behalf of the Panel Members:
Mr Nicolas Theron and Mr Johan Volsteedt