

DISCIPLINARY HEARING

IN THE INDEPENDENT DOPING HEARING PANEL

established in terms of rule 8.1 of the Anti-Doping Rules made under
the South African Institute for Drug-Free Sport Act, 1997 (Act 14 of 1997)

HELD ON 19 JULY 2017

AT THE HOLIDAY INN EXPRESS JOHANNESBURG-ROSEBANK

In the matter of:

South African Institute for Drug-Free Sport

Complainant

and

Louisa Leballo

Respondent

Before

Prof Steve Cornelius
Dr Andy Branfield
Mr Leon Fleiser

Chairperson
Panel Member
Panel Member

RULING

1. The Complainant was represented by Ms Wafeekah Begg, who acted as the Prosecutor in this matter.

2. The Respondent was present in person and conducted her own defence.

Anti-doping rules violation – adverse analytical finding

3. The following facts were common cause:

3.1 The Respondent is an athlete who participates in long distance track events and road running. She is a member of the Nedbank Running Club and, as such, she is subject to the rules of Athletics South Africa, the South African Sports Confederation and Olympic Committee and the South African Institute for Drug-Free Sport. The Respondent, who is now aged 39 years, has actively participated in distance running since the age of 9 years and has, at junior and senior level, represented South Africa at various global cross country and half-marathon events.

3.2 On 20 March 2017, the Respondent was requested to provide a urine sample during an out-of-competition test in accordance with South African Institute for Drug-Free Sport Anti-Doping Rules 2016 (the Rules).

3.3 The urine samples were submitted to the Doping Control Laboratory in Ghent (the Laboratory), which was, at the time, a laboratory accredited by the World Anti-Doping Authority (WADA).

3.4 An analysis of the A-sample returned an adverse analytical finding in that it revealed the presence of Erythropoiesis Stimulating Agents, including Erythropoietin (EPO), in the A-sample.

4. Erythropoiesis Stimulating Agents and EPO are prohibited substances in terms of article 4.1 of the Rules read with the 2017 WADA List of Prohibited Substances and Methods (the WADA List) and are listed under category S2 Peptide Hormones, Growth Factors, Related Substances, and Mimetics and as such, do not constitute Specified Substances in terms of article 4.2.2 of the Rules.

5. Article 2 of the Rules provides inter alia:

“The following constitute anti-doping rule violations:

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

2.1.1 ...

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 where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two (2) bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

6. The Complainant notified the Respondent of the adverse analytical finding in a letter dated 25 May 2017 and, since Erythropoiesis Stimulating Agents and EPO are not specified substances in terms of article 4.2.2 of the Rules, the Respondent was provisionally suspended from participation in any sport as from the date of the notification. The Respondent did not dispute the adverse analytical finding and waived her right as contemplated in article 7.3.2 to have the B-sample tested.

Anti-doping rules violation – subverting the doping control process

7. The out-of-competition test on 20 March 2017 was all but routine and the following incident was reported:

7.1 The Doping Control Officer (DCO) who conducted the out-of-competition test on 20 March 2017, Ms Mbali Hadebe, reported that, after she had introduced herself to the Respondent and explained the Respondent's rights and responsibilities, the Respondent requested that the test should be cancelled because the Respondent had apparently taken pain medication that same day. The DCO reported further that the Respondent next offered her money in exchange for cancellation of the test. The Respondent then indicated that she had taken a mixture of traditional herbs given to her by a traditional healer. After a telephone call to the general manager of the Complainant, the Respondent again offered money to the DCO to cancel the test. Eventually, when it became apparent that the DCO would not back down, the Respondent relented and complied with the instructions of the DCO to complete the test.

7.2 The Respondent is consequently also charged with a violation of Article 2.5 of the Rules, which provides that the following is anti-doping rules violation:

Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organisation or intimidating or attempting to intimidate a potential witness.

7.3 The Complainant notified the Respondent of the anti-doping rules violation in a letter dated 21 April 2017. The Respondent replied in an email dated 3 May 2017, in which she vaguely admitted the anti-doping rules violation and explained that she was nervous since she had taken “pain tablets Asprin/Disprin [sic] and hour before”.

7.4 At the hearing before the panel, the Respondent did not deny the allegations and under questioning by Ms Begg, she conceded that her conduct amounted to a corrupt attempt to subvert the doping control process.

8. Initially, the Respondent waived her right to a hearing and the Complainant notified the Respondent in a letter dated 22 June 2017, that she would be suspended for a period of six years. The Respondent then requested a hearing, which brought the present matter before the Panel.

Finding on anti-doping rules violations

9.1 The Panel finds that the Respondent is guilty of a violation of Article 2.1 of the Rules in that an analysis of the Respondent’s urine sample taken during an out-of-competition test on 20 March 2017, returned an adverse analytical finding in that it revealed the presence of Erythropoiesis Stimulating Agents, including Erythropoietin (EPO), in her urine sample.

9.2 The Panel further finds that the Respondent is guilty of a violation of Article 2.5 of the Rules in that the Respondent attempted to subvert the doping control process by seeking to corrupt the DCO in an attempt to avoid the out-of-competition test on 20 March 2017.

Appropriate sanction – adverse analytical finding

10. Article 10.2.1 of the Rules provides *inter alia* that the period of eligibility for an anti-doping rules violation contemplated in Article 2.1 of the Rules, shall be four years

where the anti-doping rule violation does not involve a specified substance, unless the athlete can establish that the anti-doping rule violation was not intentional.

11. The Respondent explained before the panel that she was not sure how EPO came to be in her system. All she could offer was that she had been suffering from excessive bleeding during her menstrual cycle and had gone to see a medical practitioner in Sunnyside, who gave her an injection. The Respondent did not know what was in the injection.

12. The Respondent was a very unsatisfactory witness. Her testimony before the panel was vague and her replies to questions were elusive. She could not remember the name of the medical practitioner that supposedly gave her the injection, nor could she provide the location of the medical practitioner, apart from stating that it was in Sunnyside and that there was a sign which indicated "Surgery". Even the date on which she went to see the medical practitioner, apparently eluded her. Furthermore, the Respondent could not explain why she did not go to see her usual medical practitioner or why she did not make use of the medical staff at the High Performance Centre at the University of Pretoria, where she often went for treatment and physiotherapy.

13. The Respondent resides in La Montagne. When asked why she travelled from there all the way to Sunnyside and did not rather seek advice from a practitioner closer to home, she explained that she was still new in La Montagne and not familiar with the suburb – despite the fact that she has already been living in La Montagne for more than three years. Overall, the Respondent's explanations were flimsy and devoid of substance.

14. The panel finds that in terms of article 10.2.1 of the Rules, the Respondent has failed to establish in respect of the anti-doping rule violation which does not involve a specified substance, any factor which could conceivably signify no significant fault or negligence.

15. In fact, in view of the evasive nature of the Respondent's answers before the Panel and her inability to offer any rational explanation with regard to the medical practitioner that she supposedly consulted, the Panel finds that it is highly probable that the Respondent wilfully took EPO with the aim of improving her athletic performance.

16. Accordingly, the Panel rules that the appropriate sanction in respect of the adverse analytical finding is a period of ineligibility of four years. In addition, in terms of Article 10.8 of the Rules, all competitive results of the Respondent obtained from 20 March 2017, being the date on which the positive sample was collected, are disqualified with all of the resulting consequences, including forfeiture of any medals, points and prizes.

Appropriate sanction – subverting the doping control process

17. Article 10.3.1 of the Rules provides *inter alia* that the period of eligibility for an anti-doping rules violation contemplated in Article 2.5 of the Rules, shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional.

18. The Respondent was not charged with failing to submit to sample collection and could offer little more to explain why she attempted to subvert the process by seeking to corrupt the DCO in return for not proceeding with the test.

19. The Panel takes a grim view of the Respondent's attempt to subvert the anti-doping process. The world of sports, and more specifically Athletics, as well as the fight against doping in sport, has been rocked with far too many scandals. If the integrity of the doping control process is undermined, it could have dire consequences for athletes in South Africa as it could put South Africa's future participation at international and global events at risk. This would be to the detriment of clean athletes seeking to make an honest living from sport.

20. Although the Respondent never denied that she attempted to corrupt the DCO, her admission before the Panel was matter-of-fact and showed little remorse. Furthermore, in view of the Panel's finding that it is most probable that the Respondent took EPO wilfully, the Panel also finds that it is most probable that the Respondent knew that she was at risk of returning an adverse analytical finding when she was called for an out-of-competition test on 20 March 2017, and that this was the main motivation why she sought to corrupt the DCO so as to avoid the test. Based on this and the serious nature of her violation, the Panel is of the view that no reduction in terms of Article 10.6.3 of the Rules is warranted.

21. Accordingly, the Panel rules that the appropriate sanction in respect of the attempt to subvert the anti-doping process is a period of ineligibility of four years.

Multiple anti-doping rules violations

22. Article 10.7 of the Rules lays down guidelines with regard to the period of ineligibility that should be imposed where an athlete is found guilty of a second or third anti-doping rules violation. The Complainant dealt with the case on the basis of the attempt to subvert the anti-doping process as the Respondent's first anti-doping rules violation, while the adverse analytical finding was addressed as the Respondent's second anti-doping rules violation and the Complainant sought apply the provisions of Article 10.7 accordingly.

23. However, the Panel is of the view that Article 10.7 of the Rules does not apply in the present matter before the Panel. Article 10.7 is directed at addressing the appropriate sanction to impose on repeat offenders who commit similar anti-doping rules violations on different occasions. Article 10.7 is not directed at determining the appropriate sanction where two different anti-doping rules violations are committed in circumstances where the one anti-doping rules violation is effectively a separate, calculated move aimed at compounding the other anti-doping rules violation, as in the present matter before the Panel.

24. In the case of *Van Rooyen v S* 2012 2 SACR 141 (ECG), which involved the interpretation of a statutory provision dealing with mandatory suspension of a driver's licence in the event of second or third convictions for driving while intoxicated, the court explained (parr 19 - 21):

19. ... The ordinary meaning of the phrase has been held to mean "an offence under the same section as was applicable to the previous offence". Further, "...the words 'second offence' and 'third and any subsequent offence' are read as meaning an offence after a previous conviction or convictions, as the case may be, for an offence under the section. The enactment aims at a persistent breach of the law after a previous conviction..." and "Ordinarily, the terms 'second offence' and 'subsequent offence' (i.e., subsequent to a second offence) mean successive offences committed against the same section or a predecessor section...". A "second" contravention accordingly presupposes the

existence of a first or earlier conviction, the identity of which is determinative of whether the present conviction constitutes a “second” or “subsequent offence.” It is succinctly explained as follows in Black’s Law Dictionary: “Second offence. An offence committed after conviction for a first offence. The previous conviction, not the indictment, forms the basis of the charge of a second offence.”

20. ... It does not provide that a previous conviction for any of the offences referred to in subsection (1) constitutes a “second” or “third or subsequent offence”. ...

21. ... Whether or not such a conviction constitutes a second or subsequent conviction is to be determined with reference to the nature of the offender’s prior conviction. If they correspond, then the later conviction constitutes a second offence ...

24. In other words, an anti-doping rules violation will only constitute a second violation as contemplated in Article 10.7 of the Rules if the nature of the violations are the same, such as multiple adverse analytical findings on different occasions. It does not apply where one anti-doping rule violation is aimed at compounding the other anti-doping rule violation.

25. The Panel is then left to determine the effective period of ineligibility that should be imposed on the Respondent by considering whether the two periods of ineligibility should in part or in whole run concurrently. In view of the serious nature of both anti-doping rules violations, and taking into account the interests of honest athletes and society in general, as well as the potential harm that doping and corruption could pose to honest athletes, including the deterrent effect of harsh consequences, the Panel is of the view that the two periods of ineligibility should not run concurrently, but should run consecutively so that the effective period of ineligibility imposed on the Respondent is eight years.

Ruling of Panel

26.1 It is the ruling of the Panel that the Respondent is guilty of a violation of Article 2.1 of the Rules.

26.2 In respect of the violation of Article 2.1 of the Rules, it is the ruling of the Panel that the period of ineligibility that is imposed on the Respondent is four years.

26.3 It is the ruling of the Panel that the Respondent is guilty of a violation of Article 2.5 of the Rules.

26.4 In respect of the violation of Article 2.5 of the Rules, it is the ruling of the Panel that the period of ineligibility that is imposed on the Respondent is four years.

26.5 It is the ruling of the Panel that the two periods of ineligibility must run consecutively, resulting in an effective period of ineligibility of eight years.

26.6 It is the ruling of the Panel that, in terms of Article 10.8 of the Rules, all competitive results of the Respondent obtained from 20 March 2017, being the date on which the positive sample was collected, are disqualified with all of the resulting consequences, including forfeiture of any medals, points and prizes.



Prof Steve Cornelius
Chairperson



Dr Andy Branfield
Panel Member



Mr Leon Fleiser
Panel Member

Johannesburg
19 July 2017