

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF BRITISH BOXING BOARD OF CONTROL**

Before:

Robert Englehart QC (Chair)

Blondel Thompson

BETWEEN:

UK Anti-Doping

National Anti-Doping Organisation

-and-

Robbie Turley

Respondent

**DECISION OF THE ANTI-DOPING
TRIBUNAL**

INTRODUCTION

1. We were convened as the Anti-Doping Tribunal to determine a charge brought by the National Anti-Doping Organisation, UKAD, against a boxer, Robbie Turley. The hearing was held on 8 January 2018 at which it had been intended that there should be a Tribunal of three members. However, one of the intended members, Carole Billington-Wood, fell ill and so could not attend. In the circumstances, both parties expressly agreed at the beginning of the hearing to a two member Tribunal consisting of Robert Englehart QC as Chairman and Blondel Thompson deciding the case. We should like to express our gratitude for the thoughtful and succinct submissions made orally and in writing by both Counsel, Gideon Cammerman QC who appeared for Mr Turley and Paul Renteurs who appeared for UKAD.
2. The charge brought by UKAD was of an Anti-Doping Rule Violation by Mr Turley arising from an Adverse Analytical Finding of Furosemide in a urine sample provided by Mr Turley on 7 April 2017 following a contest for the Commonwealth Super Bantamweight Title. Mr Turley won that fight. However, the urine A sample provided by Mr Turley revealed the presence of a small amount of Furosemide in his system. Moreover, this finding was confirmed a few months later when Mr Turley had his B sample analysed. Mr Turley accepts that he was at all material times subject to the British Boxing Board of Control Anti-Doping Rules ("ADR"). Moreover, no issue was raised about the testing process. Mr Turley accepts that he did commit an Anti-Doping Rule Violation under the ADR. The short but, for Mr Turley, important issue argued before us concerned solely the matter of sanction. The case for Mr Turley was that we should impose a lesser sanction than would otherwise be applicable on the basis that in all the circumstances he bears No Significant Fault or Negligence for the presence of the Furosemide.

THE BACKGROUND

3. Mr Turley boxes, as noted, in the Super Bantamweight category. He is now aged 31 and told us that he has had 25 fights, with 18 victories, over his professional career. There was a period of rather over two years when Mr Turley did not fight since his licence was suspended due to concerns arising out of a brain scan. Those concerns were ultimately

shown to be groundless, but Mr Turley told us that since that time he had always been assiduous in keeping up his hydration levels.

4. Mr Turley lives near his grandfather, Gwyn Turley, and his late grandmother. He is very close to his grandfather who encouraged him in his boxing career. Spring 2017 was not an easy time for Mr Turley. He had an important fight coming up, that is the Commonwealth title fight, and his grandmother was on the point of death. He was visiting her and his grandfather every day and having to fit his visits around an intense training schedule for the forthcoming fight. For that Commonwealth Championship contest the weight limit is 8 stone 10 lbs with a maximum permitted excess of 3%, that is about 4 lbs.
5. There were three occasions on which Mr Turley's weight was checked prior to 7 April 2017. The first check weight on 31 March 2017 recorded his weight at 9 stone 4lbs and a second check weight on 4 April 2017 recorded it at 8 stone 9½ lbs. The evidence was that Mr Turley and his father were surprised at how low his weight was on 4 April 2017 and asked that the scales be checked. They were found to be in order. Finally, Mr Turley's official weight for the contest 24 hours prior to the bout was recorded at 8 stone 9 lbs 8ozs. In evidence Mr Turley told us that he had never had difficulty in making weight throughout his boxing career.
6. As already noted, the bout took place on 7 April 2017, and Mr Turley was the winner. Afterwards Mr Turley provided a urine sample. It is right to note that on the Doping Control Form Mr Turley recorded that he had taken "Ibrufen" [*sic*] within the previous 7 days. However, Mr Turley told us that he was astonished when the result of the urine test came back with a positive finding of a small amount of Furosemide, a Prohibited Substance. Initially, he found this inexplicable. He had his B sample analysed, but ultimately this confirmed the previous finding.
7. When discussing the finding of Furosemide with his grandfather, Mr Turley came to appreciate what must have happened. His evidence about this was corroborated by an unchallenged witness statement from his grandfather, Gwyn Turley. He is now aged 85, and Mr Renteurs did not require him to attend the hearing to give oral evidence or answer any questions on the telephone.

8. The evidence was that on 4 April 2017, a few hours before the check weight, Mr Turley was visiting his dying grandmother. He had bruised knuckles from sparring and told his grandfather that he had to leave to go to the chemist; he wanted to get some Ibuprofen. The grandfather was keen that he should stay and told Mr Turley that he had some Ibuprofen in the medicine box where he kept all the medicaments for himself and his wife. Mr Turley then went to the medicine box and took two tablets of what he assumed at the time was Ibuprofen.
9. At the time, Gwyn Turley was taking Furosemide which had been prescribed for high blood pressure. His evidence was that the medicine basket at his home had many different loose packs of pills which he had tidied up and inadvertently must have put a Furosemide blister pack into an Ibuprofen packet. We were shown at the hearing how the Ibuprofen packets in his medicine chest are of varying different appearance, and there is no standard colour or size for the pills themselves. It is, however, right to record that all the Ibuprofen packets which we were shown are of a shape that a full Furosemide blister pack would not readily fit.

FUROSEMIDE

10. Furosemide is a Prohibited Substance under S5 (Diuretics and Masking Agents) of the WADA Prohibited List. It is also a Specified Substance under the ADR. One relevant reason, for the purposes of this case, why it is a Prohibited Substance is that it can be used by those involved in contact sports such as boxing to lose weight rapidly by causing dehydration. The evidence was that it operates within a short time frame. However, it is to be noted that Furosemide may also have legitimate uses. It is prescribed both to treat fluid build up and also, as in Gwyn Turley's case, to treat high blood pressure.

THE ANTI-DOPING RULE VIOLATION

11. Under Article 2 of the ADR:

The following constitute Anti-Doping Rule Violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his/her Sample. 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; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1.

There clearly was a small quantity of Furosemide in the sample provided by Mr Turley on 7 April 2017. Mr Turley accepts this. He accordingly accepts that he did commit an Anti-Doping Rule Violation. The real issue in this case, as we have mentioned, concerns sanction.

SANCTION

12. Under Article 10.2 of the ADR the starting point for an Anti-Doping Rule Violation under Article 2.1 is a period of Ineligibility of four years. The period of Ineligibility is, however, reduced to two years where in the case of a Specified Substance UKAD does not establish that the violation was intentional (within the meaning of Article 10.2.3). In Mr Turley's case UKAD has not sought to establish positively that the violation was intentional. It follows that the starting point here is a period of Ineligibility of two years. But this is subject to possible further reduction of the period of Ineligibility under Articles 10.4, 10.5 or 10.6 of the ADR.
13. It is not suggested that Article 10.6 of the ADR has any application in Mr Turley's case. Moreover, Mr Turley very properly does acknowledge that this is not a case where he can be said to bear No Fault or Negligence at all for the Anti-Doping Rule Violation such that all Ineligibility would be eliminated under Article 10.4. However, Mr Turley does rely on Article 10.5.1(a).

14. This provides:

(a) Specified Substances

Where the Anti-Doping Rule Violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

SUBMISSIONS FOR UKAD

15. Mr Renteurs does not concede that there was indeed the mix up of medicaments suggested by Mr Turley and his grandfather in their evidence. He points to it having been said at one time that Mr Turley took the Furosemide on 3 April 2017. If this were so, then Mr Renteurs drew our attention to the evidence of Professor Cowan. His evidence was expressed in fairly cautious terms on the assumption that Mr Turley took the Furosemide on 4 April 2017:

However I am uncomfortable with extrapolating over so many half-lives given the relatively small concentration of furosemide found in the Athlete's sample, and would not wish to exclude the possibility that an amount of Furosemide was taken 80 hours before Sample Collection as claimed.

But, if Furosemide were taken on 3 April 2017 he said:

This means that the time from claimed administration has increased from 80 hours to 104 hours. In my opinion, this additional time makes it very unlikely to explain the finding of furosemide in the Sample collected on 7 April 2017.

16. Nevertheless, Mr Renteurs realistically accepted that he could not challenge Mr Turley's case that the 3 April date was wrong. And he had no good reason to dispute the version of events put forward by Mr Turley and his grandfather, although he did draw our attention to the fact that a Furosemide blister pack would not fit whole into any of the Ibuprofen packets said to have been in Gwyn Turley's medicine box.

17. Mr Renteurs' principal submissions were directed towards showing that Mr Turley had been significantly at fault even on his own factual case. Mr Renteurs drew our attention to the "Core Responsibilities" under Article 1.3.1 of the ADR:

It is the personal responsibility of each Athlete:

(a) to acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules, including (without limitation) being aware of what constitutes an Anti-Doping Rule Violation and of what substances and methods are on the Prohibited List;

(b) to comply with these Rules in all respects;

(c) to take full responsibility for what he/she ingests and uses;

Furthermore, Mr Renteurs drew our attention to a number of decided cases, including *Depres v CCES CAS 2008/A/1489*, where Tribunals have taken a restrictive approach to the question of significant fault. It has been said that it is the duty of any athlete to exercise the "utmost caution" against the possibility of an Anti-Doping Rule Violation.

18. It was emphasised by Mr Renteurs that the blister packs of Furosemide in Mr Gwyn Turley's medicine box clearly had the name of the drug printed on the silver back of the pack. Even assuming that a Furosemide blister pack had inadvertently been put into an Ibuprofen packet, it would have been folly not even to have noticed what was plainly stamped on the blister pack itself. Furthermore, the oblong Furosemide blister packs would not fit properly into one of the square Ibuprofen packets. Anyone exercising reasonable care would have wondered why the blister pack did not fit. Also, the state of Gwyn Turley's medicine box as described was such that it cried out for great care over the contents. It should have been particularly important for Mr Turley to take great care over what he was taking by way of medicaments when he was about to contest an important title. In summary, Mr Renteurs submitted that it could not be said that Mr Turley's lack of care was, even on his own version of the facts, insignificant.

SUBMISSIONS FOR MR TURLEY

19. Mr Cammerman invited us to accept that what had occurred was indeed what was explained in the evidence of Mr Turley and his grandfather. Indeed, Mr Cammerman reminded us that the evidence of the grandfather had been admitted without any challenge by UKAD. Moreover, there were other indications that the explanation was correct. It was to be noted that Mr Turley had indeed recorded on the Doping Control Form that he had taken "Ibrufen" [*sic*]. The surprising fall in weight on Mr Turley's check weight on 4 April was, given the short reaction time of Furosemide, consistent with his account of events. Furthermore, Mr Turley was evidently astonished that his sample had given a positive reading for Furosemide; hence, he had required his B sample to be analysed. And Mr Cammerman stressed the importance to Mr Turley of maintaining hydration, rather than becoming dehydrated after Furosemide, following his previous brain scan scare. Finally, it was stressed that Mr Turley had no reason to have knowingly taken Furosemide since he had never had any difficulty in making the requisite weight for a contest.
20. Mr Cammerman submitted that ultimately the case turned on what should be the consequence of Mr Turley not having noticed what was written on the silver paper on the back of a Furosemide blister pack. It was material to note that the evidence demonstrated how Ibuprofen pills themselves came in varying shapes and colours; no criticism could attach to Mr Turley for not having realised from the pills themselves which he took that he was not taking Ibuprofen.
21. Mr Cammerman emphasised that the definition of No Significant Fault or Negligence in the ADR requires us to take into account the totality of the circumstances. Mr Turley's momentary inattention at a time of some considerable stress for him did not warrant a two year disqualification. The word "Significant" was an ordinary English word which required no elaboration. Whilst Mr Turley accepted that he should have been more careful over what he was taking, his degree of fault could not be said to have been significant in all the circumstances.

DISCUSSION

22. In considering whether the two year period of Ineligibility may be reduced for an absence of Significant Fault the preliminary question for us under the ADR definition of No Significant Fault or Negligence is whether Mr Turley has established how the Furosemide entered his system. It is our conclusion on the evidence that the most likely explanation is indeed the one advanced by Mr Turley. We consider that, quite apart from the witness evidence, the surrounding facts are consistent with this explanation.
23. Mr Turley had no pressing reason for wanting a fast weight reduction on 4 April 2017 and indeed was evidently surprised when this in fact occurred. He noted on the Doping Control Form that he had recently taken Ibuprofen. And he was clearly astonished by the result shown by his A sample such that he required the costly exercise of having his B sample analysed. We found Mr Turley to be a credible witness. He came across as a likeable person who, although no doubt a highly skilled boxer, is perhaps not the most gifted intellectually. We conclude that the Furosemide entered Mr Turley's system on 4 April 2017 when he mistakenly consumed two tablets of his grandfather's Furosemide with the intention of taking Ibuprofen.
24. We now turn to consider the question whether in all the circumstances Mr Turley has demonstrated that his Fault or Negligence was not significant. He admits, and we agree, that he cannot be said to have been entirely blameless given, in particular, the clear indication of the contents on the back of a Furosemide blister pack. But we have to consider the significance of his culpability. In doing so, we note that we have a wide remit under the ADR. Fault is defined thus:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk.

25. We agree with Mr Cammerman that the word "Significant" is an ordinary word of the English language and should not be given some special meaning. We also agree that it would be wrong simply to identify some fault on the part of an athlete and, with the benefit of hindsight, assume it to have been significant. As has been said, the hurdle must not be set so high that in practice reductions in sanction under ADR Article 10.5.1 are rendered unavailable. It is to be noted that under Article 10.5.1, even where No Significant Fault or Negligence has been found, a Tribunal has to assess the fault within a broad spectrum of possible sanction.
26. Certainly, any athlete has a core responsibility for what he ingests. He needs to be vigilant against the possibility that, even inadvertently, he is breaching the Anti-Doping Rules such that he may, whilst harming himself, obtain a competitive advantage over others.
27. There is no doubt that Mr Turley was at fault for his thoughtless consumption of his grandfather's Furosemide simply because he found it inside an Ibuprofen packet. The nature of the pills was clearly stamped on the blister pack itself. The pack would not have fitted comfortably within the shape of an Ibuprofen packet. And the description we had of the state of his grandparents' medicine box was such that it cried out for particular care in the selection of pills.
28. Notwithstanding the powerful criticism which may be made of Mr Turley's thoughtlessness, we have come to the conclusion that in all the circumstances we should find that there was No Significant Fault or Negligence. There was nothing deliberate, such as for example the taking of some food supplement, in what Mr Turley did. He was simply inattentive. We accept that this was a stressful time for him. His grandfather clearly wanted him to remain at the house with his dying grandmother rather than leave to go to the chemist. It is understandable, even if not fully excusable, how Mr Turley's error occurred.
29. Whilst we accept that Article 10.5.1(a) of the ADR does apply here, we consider that the result of Mr Turley's thoughtlessness must be marked by an appreciable period of Ineligibility. Mr Renteurs agrees that in all the circumstances of this case Ineligibility may, on account of Mr Turley's prompt admission, be backdated to the date of the

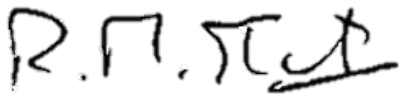
sample collection, that is 7 April 2017: cf. ADR Article 10.11.2. Furthermore, we note that Mr Turley has in fact been provisionally suspended since 3 May 2017. He is entitled to credit for this under Article 10.11.3. In our view, Mr Turley should serve a period of Ineligibility of 12 months backdated to 7 April 2017. It follows that Mr Turley will be free to fight again with effect from 7 April 2018.

CONCLUSION

30. For the reasons set out above we find that:

- (1) the Anti-Doping Rule Violation is established; but
- (2) we are satisfied that there was No Significant Fault or Negligence; and
- (3) Mr Turley should serve a Period of Ineligibility of 12 months from 7 April 2017; and
- (4) neither party sought an order for costs.

In accordance with the National Anti-Doping Panel Rules, either party may file a Notice of Appeal against this decision within 21 days of receipt of the decision.



Robert Englehart QC

Chairman on behalf of the Tribunal

London, 29 January 2018



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