

Decision of the Japan Anti-Doping Disciplinary Panel

Case 2018-005

Name of Athlete: X  
Sport: Athletics

Pursuant to the decision of the Hearing Panel convened for this case, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

February 12, 2019  
Japan Anti-Doping Disciplinary Panel  
Vice Chair: Kazuki Shishido

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Hearing Panel Decision

The Hearing Panel for this case, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 8.3.2 of the Japan Anti-Doping Code (hereinafter, the “Code”), has made the following decision concerning this case pursuant to the results of the hearing held on January 23, 2019 (hereinafter, the “Hearing”).

February 12, 2019  
Kazuki Shishido \_\_\_\_\_  
Katsumi Tsukagoshi \_\_\_\_\_  
Masahiro Murayama \_\_\_\_\_

Decision:

- A violation of Article 2.1 of the Code is found to have occurred.
- In accordance with Articles 9 and 10.8 of the Code, all of the individual results of the Athlete obtained from the date of sample collection through the commencement date of the provisional suspension period (including the competition results at THE EMPEROR’S CUP 87<sup>TH</sup> JAPAN STUDENTS ATHLETICS INTERCOLLEGIATE CHAMPIONSHIPS) shall be disqualified, and all medals, points and prizes obtained during such period shall be forfeited.
- In accordance with Articles 10.2.1.2, 10.2.2 and 10.11.3.1 of the Code, ineligibility shall be imposed for a period of two years starting from October 11, 2018.

Reasons:

- The substances clomifene and its metabolite were detected from the Athlete in In-Competition testing conducted on September 9, 2018, and this clomifene is designated as a prohibited substance under “S4.3 Hormone and Metabolic Modulators” in The 2018 Prohibited List International Standard (hereinafter, the “Prohibited List”), and it constitutes a “Prohibited Substance” as prescribed in Article 2.1 of the Code. The Athlete subsequently requested an analysis of the B sample, and according to the Test Report submitted by LSI Medience Corporation as of October 24, 2018, it is found to have confirmed the initial detection result. In response to this, the Athlete ultimately did not contest the abovementioned test result or the process and procedure that led to those results at the Hearing (including the provisional hearing).
- Accordingly, the Athlete can be found to have violated Article 2.1 of the Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) in this case, and it is appropriate to consider that, in accordance with Articles 9 and 10.8 of the Code, all of the individual results of the Athlete obtained from the date of sample collection through the commencement date of the provisional suspension period (including the competition results at THE EMPEROR’S CUP 87<sup>TH</sup> JAPAN STUDENTS ATHLETICS INTERCOLLEGIATE CHAMPIONSHIPS; hereinafter, the “Competition”) shall be disqualified, and all medals, points and prizes obtained during such period (if any) shall be forfeited.
- The substance above that was detected in this case, while on the one hand constituting a “Prohibited Substance,” also is a “Specified Substance” under the Prohibited List. The Athlete asserts that the detected substance above is considered to be caused by supplements for pre-workouts manufactured overseas, or creatine supplements or protein (hereinafter, the “Supplements”) being taken by the Athlete at the time of the Competition, and at the same time, the Athlete also asserts that such ingestion was not intentional due to reasons such as that the Athlete, upon purchasing each of these products, confirmed through the purchasing website and the like that no prohibited substances were contained, and that the Athlete expressly declared in the Doping Control Form the fact that he took these products. In response to this, the Japan Anti-Doping Agency (hereinafter, “JADA”), while contesting that the detected substance above derives from the Supplements, does not particularly assert nor prove that the use of the detected substance above was intentional. Therefore, since this case does not fall under the case where JADA was able to prove that the violation in this case was intentional, in accordance with Articles 10.2.1.2 and 10.2.2 of the Code, the period of ineligibility shall be two years as a general rule.
- Next, we consider whether there exist any circumstances allowing for elimination or reduction of the period of ineligibility. In this regard, in this case where the violation of Article 2.1 of the Code is an issue, in order for the Athlete to be subject to the application of

the exceptional elimination or reduction of the period of ineligibility provided in Articles 10.4 or 10.5 of the Code, the Athlete is required to be able to establish “how a Prohibited Substance entered his or her system”. Here, the Athlete merely asserts such facts that (i) he had already disposed of the Supplements due to such reasons as that he had planned from the start to retire from athletics after the Competition, and that (ii) although he took Supplements of a similar type approximately three years ago, he tested negative at the doping test which he was subjected to at that time, so if the detected substance above derives from the Supplements, it is considered to be due to a mixture (so-called contamination) of a prohibited substance into a specific manufacturing lot, but since the actual objects of the Supplements do not exist, it is unrealistic to inquire each of the manufacturers of the Supplements. Although the Athlete was further given an opportunity to make additional proof-making after the Hearing under the instructions of the Hearing Panel, he ultimately clarified that he would not make any additional proof-making. Therefore, the Athlete was unable to present evidence reasonably satisfactory to the Hearing Panel concerning this issue.

- Accordingly, none of the requirements of Articles 10.4 and 10.5 were met in this case, and it cannot be said that the Athlete did not have (Significant) Fault or Negligence in this case.
- Taking into consideration the abovementioned circumstances and the fact that this was a first violation, it is appropriate to impose upon the Athlete a two year period of ineligibility pursuant to Articles 10.2.1.2 and 10.2.2 of the Code.
- In this case, the Athlete has been under a provisional suspension pursuant to Article 7.9.2 of the Code from the date of notice of October 11, 2018 by the responsible person at JADA until the time of the present decision (a provisional hearing was held on January 23, 2019 concerning the relevant provisional suspension). Accordingly, pursuant to Article 10.11.3.1 of the Code, the commencement date for the period of ineligibility shall be October 11, 2018.

Based on the foregoing, we have made our decision as stated above.

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