

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

Before:

Raj Parker (Chair)

Dominique Gavage

Patrick Grandjean

BETWEEN:

**WORLD ATHLETICS (Formerly the International Association of Athletics
Federations)**

Represented by Mr Ross Wenzel

Anti-Doping Organisation

-and-

IOANNIS KYRIAZIS

Represented by Mr Simon McCann

The Athlete

DECISION OF THE DISCIPLINARY TRIBUNAL

A. Introduction

1. The International Association of Athletics Federations ("IAAF") (now World Athletics) is the International Federation governing body of the sport of athletics worldwide. It

has its registered seat in Monaco. It is represented in these proceedings by the Athletics Integrity Unit ("AIU") which has delegated authority for Results Management and Hearings on behalf of the IAAF pursuant to Article 1.2 of the 2019 IAAF Anti-Doping Rules ("ADR").

2. Mr Ioannis Kyriazis (the "Athlete") is born on 19 January 1996 and competes in the javelin event. He has been a member of the Greek national team for the past eight years and has competed in numerous international sporting events recognized by the IAAF.
3. The AIU has charged the Athlete with committing the following Anti-Doping Rule Violations:
 - (i) Presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's Sample pursuant to Article 2.1 ADR
 - (ii) Use of a Prohibited Substance pursuant to Article 2.2 ADR
4. This case concerns the presence of LGD-4033, or Ligandrol (LGD-4033 diOH) (the "metabolite") in urine samples 3127388A and 3127388B collected from the Athlete 'Out-of-Competition' on 18 April 2019.
5. The AIU considers that the presence of the metabolite in the Athlete's samples detected by the laboratory provides sufficient proof that the Athlete has committed intentional Anti-Doping Rule Violations pursuant to Article 2.1 ADR and Article 2.2 ADR.
6. The Athlete challenges the reliability of the Sample which indicated the Presence of the metabolite in his system.
7. In the alternative he denies that he bears any fault or negligence and/or that he has committed any Anti-Doping Rule Violations intentionally.
8. If Presence is established, the Athlete has to demonstrate that the Anti-Doping Rule Violations were not committed intentionally to avoid a mandatory period of ineligibility of four years pursuant to Article 10.2.1(a) ADR.

9. The Athlete put forward two possible explanations for the presence of the metabolite in his Sample. The first is that there was an ingestion of a contaminated supplement that he had been assured was safe to take. This was no longer proceeded with at the hearing. The second, that there was inadvertent environmental contamination of the Athlete by the use by his housemate of a prohibited substance when he was sharing accommodation in Texas.

B. The Facts

10. On 18 April 2019 the Athlete underwent an Out-of-Competition doping control test in College Station, Texas, USA. He provided a urine sample with reference number 3127388.
11. The A sample was analysed by the WADA accredited laboratory in Laval, Quebec Canada (the laboratory), which, on 14 May 2019, reported the presence of the metabolite resulting in an adverse analytical finding ("AAF").
12. The metabolite, which is a non-threshold substance, is a Selective Androgen Receptor Modulator ("SARM") and is expressly listed in S1.2 in Other Anabolic Agents of the WADA 2019 Prohibited List. It is a non-specified substance and is prohibited at all times.
13. On 31 May 2019 the AIU notified the Athlete (on behalf of the IAAF) of the AAF informing him that a provisional suspension had been imposed (effective immediately). He was also notified of his right to have the B sample analysed, and invited to provide an explanation for the AAF.
14. On 6 June 2019 the AIU received a response from the Athlete's then appointed legal representatives requesting the documentation from the laboratory supporting the AAF, analysis of the B sample, and confirming that the Athlete suspected that the AAF was due to his consumption of a contaminated supplement. The Athlete requested an extension to provide his full explanation until receipt of the laboratory documentation and analysis of the B sample had been completed.

15. On 12 June 2019 the B sample was analysed by the laboratory and the results provided to the AIU on 18 June 2019 and further communicated to the Athlete on the same day. The analysis had confirmed the AAF.
16. Between 21 and 26 June 2019 the AIU and the Athlete's legal representatives discussed arrangements for analysis of a nutritional supplement by the WADA accredited laboratory in Montreal.
17. On 26 June 2019 the Athlete's legal representatives confirmed that the supplement used by the Athlete was called 'No-Xplode' (the "supplement") and attached images of it and proof of purchase. The Athlete's legal representatives also confirmed that the Athlete wished to analyse the open and sealed containers of the supplement.
18. The unsealed and sealed containers of the supplement arrived at the laboratory on 22 July 2019 and following analysis on 13 August 2019 the laboratory confirmed that no metabolite had been detected in either the unsealed or the sealed containers of the supplement provided by the Athlete.
19. The results from the analysis of the supplement were immediately communicated to the Athlete's legal representatives and the Athlete was afforded until 20 August 2019 to provide his explanation for the AAF.
20. On 19 August 2019 the Athlete provided his explanation and on 21 August 2019 the AIU received confirmation from the Athlete's legal representatives that they no longer represented him in this matter.
21. On 23 August 2019 the AIU received an email from the Athlete asserting that he was expecting to receive information from his University in the US concerning the details of the drug test that he undertook '*a couple of days before I got drug tested from the AIU/WADA*' which allegedly had returned a negative result. The AIU agreed to the Athlete's request for an extension to provide this information to the AIU.
22. On 30 August 2019 the Athlete sent the AIU a witness statement from Mr Brody Gowing, one of the Athlete's housemates in Texas, dated 29 August 2019. Mr Gowing's witness statement included the following passages:

"I used to be on the Track team with him, and every time I brought up the idea of using drugs to get an edge up against my competition, John would immediately protest those ideas, and be the first one to clearly state that it would be the drugs making me better, not myself.

...

One of our roommates that was not an athlete was taking SARMS for both semesters of last year for bodybuilding purposes. I talked to him about it multiple times, and how the idea was not the greatest. This roommate must have contaminated John's food, utensils or even the drug testing process and that's how the substance showed up on Johns drug test". [sic]

23. On the same day he also forwarded a letter from Mr Juan de la Garza, assistant coach of Texas A & M University, which said that the Athlete was subject to regular monthly testing by his university (amongst others).
24. On 3 September 2019 the AIU issued the Athlete with a Notice of Charge letter for violations of Article 2.1 ADR and Article 2.2 ADR and pursuant to Article 8.4.2 ADR invited him to confirm how he wished to proceed with the matter by no later than 12 September 2019.
25. On 11 September 2019 the Athlete submitted his request for a hearing before the Disciplinary Tribunal with a copy to Sport Resolutions and on 17 September 2019 Mr Raj Parker was appointed as Chair of the Panel to determine the matter.
26. On 27 September 2019 Sport Resolutions advised that the Athlete was now represented pro bono by Mr Simon McCann and on 29 October 2019 a preliminary meeting was convened between the parties and procedural directions were issued for determination of the case.
27. On 14 November 2019 Mr McCann filed the Athlete's summary response to the Notice of Charge in accordance with paragraph 1.1 of the Directions dated 29 October 2019 and on 29 November 2019 the AIU filed its brief. The Athlete filed an Answer brief on 9 January 2020 and the AIU filed a Reply brief on 7 February 2020.

28. On 25 February 2020 a hearing was held at the offices of Sport Resolutions in London. The Athlete and his father attended in person and each gave evidence. He was represented by Mr Simon McCann of counsel.
29. The AIU attended by Mr Tony Jackson, Ms Olympia Karavasili and counsel Mr Ross Wenzel.
30. The Chair presided at the hearing and the co-Panel members attended by video conference.
31. The Panel also heard evidence by video conference from the experts. There were four experts for the Athlete Professor Konstantinos Poulas, Professor Vassilis Mougios, Professor Anthony Tsarbopoulos, and Professor Nikos Geladas. Professor Christiane Ayotte gave expert evidence for the AIU. The Panel also heard from Mr Brody Gowing by video conference and accepted the written evidence given by Mr Juan de la Garza.

C. Jurisdiction, Burden and standard of proof and Applicable rules

1.- Jurisdiction

The Athlete

32. The applicable rules are the ADR, which apply to all athletes who are members of a National Federation and to all athletes participating in competitions organised, convened, authorised or recognised by the IAAF.
33. Article 1.2 ADR states as follows:

"In accordance with Article 16.1 of the 2017 IAAF Constitution, the IAAF established an Athletics Integrity Unit ("Integrity Unit") with effect from 3 April 2017 whose role is to protect the integrity of Athletics, including fulfilling the IAAF's obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International -Level Athletes and Athlete Support Personnel: Education,

Testing, Investigations, Results Management, Hearings, Sanction and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit)."

34. The application of the ADR to Athletes, Athlete Support Personnel and other persons are set out in Article 1.6 ADR, and provides:

"1.6 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:

- a) all Athletes and Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);*
- b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognised by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;*
- c) all Athlete Support Personnel or other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and*
- d) any other Athlete, Athlete Support Personnel or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping."*

35. On 18 April 2019 when he provided the A sample the Athlete was a member of the Hellenic Athletics Federation, an IAAF Member Federation. He has also competed in several athletics events recognised by the IAAF, including the 2017 IAAF World

Championships in London UK and as a representative of his university Texas A & M in 2018 at the SEC Outdoor Track and Field Championships in Knoxville, Tennessee on 11 May 2018 and NCAA West Preliminary Round (24 May 2018 to 26 May 2018). The Athlete is therefore subject to the ADR pursuant to inter alia Art 1.6 (a) ADR and 1.6 (b) ADR.

The AIU

36. Article 7.2 ADR confers jurisdiction for results management on the AIU in certain circumstances including:

"7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:

7.2.1 For potential violations arising in connection with any Testing conducted under these Anti-Doping Rules by the Integrity Unit, including investigations conducted by the Integrity Unit against Athlete Support Personnel or other Persons potentially involved in such violations."

37. The Sample was collected pursuant to testing undertaken by the AIU on behalf of the IAAF. The AIU therefore has jurisdiction for results management in this matter.

The Tribunal

38. The IAAF has established the Disciplinary Tribunal in accordance with Article 1.5 ADR, which provides that the Tribunal shall determine Anti-Doping Rule Violations committed under the ADR.

39. Article 8.1 (a) ADR sets out that the Tribunal shall have jurisdiction over all matters in which:

"8.1 (a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;"

40. Article 1.8 ADR specifies those Athletes that are classified as International-Level Athletes for the purpose of the ADR as follows:

"1.8 Within the overall pool of athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International-Level Athlete ("International Level Athlete") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes shall apply to such Athletes:

a) *An Athlete who is in the International Registered Testing Pool*

[...]

c) *Any other Athlete whose asserted Anti-Doping Rule Violation results from (i) Testing conducted under the Testing Authority of the IAAF; (ii) an investigation conducted by the IAAF or (iii) any of the other circumstances in which the IAAF has results management authority under Article 7."*

41. On 18 April 2019 the Athlete was in the IAAF International Registered Testing Pool.

42. In addition the testing of the Athlete on 18 April 2019 was conducted under the testing authority of the IAAF.

43. The Athlete therefore is an International-Level Athlete for the purposes of the ADR. The Tribunal has the requisite jurisdiction to hear and determine the Anti-Doping Rule Violations alleged against the Athlete pursuant to Article 8.1 (a) ADR.

44. The Athlete does not contest the jurisdiction of the IAAF or the Tribunal in this matter.

2.- Burden and standard of proof

45. Article 3.1 ADR provides that the IAAF shall have the burden of establishing that an Anti-Doping Rule Violation occurred to the comfortable satisfaction of the Panel:

"3.1 The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The

standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that 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.”

46. Article 3.2 ADR states that facts relating to Anti-Doping Rule Violations may be established by any reliable means.

47. In that regard Article 3.2 ADR also states:

"3.2.2 Compliance with an International Standard, (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.

3.2.3 WADA -accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in compliance 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 that could reasonably have caused the Adverse Analytical Finding. In such an event, the IAAF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2.4 Departures from any other International Standard, or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that did not cause the facts alleged or evidence cited in support of a charge (e.g., an Adverse Analytical Finding) shall not invalidate such facts or evidence. If the Athlete or other Person establishes the occurrence of a departure from an International Standard or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that could reasonably have caused the Adverse Analytical Finding or other facts alleged to constitute an Anti-Doping Rule Violation, then the IAAF or other Anti-Doping Organisation shall have the burden to establish that such departure did not cause such Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation.”

3.- Applicable rules

48. Article 2 ADR specifies the circumstances and conduct that constitutes Anti-Doping Rule Violations.

"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 duty to ensure that no Prohibited Substance enters his 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"

49. With regard to the presence of a prohibited substance or its metabolites or markers in an Athlete's Sample article 2.1.2 ADR states:

"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 analyzed; or, where the Athlete's B Sample is analyzed 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 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."

50. The presence of a prohibited substance or its metabolites or markers in an Athlete's Sample is therefore sufficient to establish that an Athlete has committed an Anti-Doping Rule Violation pursuant to article 2.1 ADR.

51. With regard to an Athlete's Use of a prohibited substance or prohibited method Article 2.2 ADR also states that the following shall constitute an Anti-Doping Rule Violation:

"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance, or a Prohibited Method

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method."

52. It is each Athlete's strict personal duty to ensure that no prohibited substance enters his body or is used. Accordingly it is not necessary for the IAAF to demonstrate intent, Fault, negligence or knowing use by the Athlete to establish that an Anti-Doping Rule Violation has occurred. An Athlete is strictly liable for the presence of any prohibited substance.

D. The Athlete's case

53. The Athlete gave evidence to the Panel at the hearing.

54. He provided a witness statement dated 19 August 2019 and confirmed that the facts within it were true. He described suffering an adductor injury in January 2018 which persisted and required an operation on 31 May 2018. There was then a period of rehabilitation which lasted until March 2019. Having consulted his father about energy drinks for the fatigue he was experiencing, his father recommended, having researched the matter, a supplement which he then took steps to ensure it was safe. The last time he took the supplement was on 9 April 2019. That was the first day he tried to throw after his injury.

55. From the time he was informed that he had tested positive on 31 May 2019 up until August 2019 his explanation for the alleged Presence of the metabolite was that the supplement he took "No-Xplode" must have been responsible. This was no longer pursued at the hearing. The analysis by the laboratory on 13 August 2019 had confirmed that no metabolite had been detected in the containers of the supplement provided by the Athlete.

56. The Athlete's evidence to the Panel was that he had never tried to cheat by using banned substances and has always been an advocate of clean sport. He was still

recovering from his injury in April 2019 and he has never used performance enhancing substances and/or methods. He has tried very hard to establish how the prohibited substance came to be present in his sample.

57. A theory which had not been advanced by the Athlete in his 19 August 2019 witness statement was put forward by the Athlete as the only credible explanation for the alleged Presence of the metabolite. A past housemate in Texas, Mr Boone McLaughlin, had recently admitted to him that he may have contaminated the Athlete with a prohibited substance (SARM's) that he was using. This was taken in capsule form from powder stored in a container kept in the shared accommodation. Mr McLaughlin was unwilling to testify to this effect and apparently has now denied taking prohibited substances. The Athlete said that the container and powder (with capsules) had been left out in a shared bathroom.
58. This was in part corroborated by Mr Brody Gowing who gave evidence via video conference. He was another former housemate but his evidence differed from the Athlete in two respects. First he said that Mr Mclaughlin confessed to him and not the Athlete. Second that the container, powder and capsules were mainly in Mr McLaughlin's private areas, for example in his bedroom, not in the shared parts of the accommodation.

Expert evidence

59. The four experts for the Athlete (the "four experts") each gave evidence to the effect that the WADA accredited laboratory had reported a false AAF because the metabolite was present in the samples at a level (16pg/ml and 29pg/ml) that is lower than the limit of detection ("LOD") and also the limit of quantification ("LOQ") of an estimated 1000pg/ml for the analytical method used in a recent paper by *Ventura et al*¹. The results should be characterized as negative or at least ambiguous. They also maintained that given the timing of the testing that the Athlete's exposure to the metabolite was unintended, passive and not repeated and could not have enhanced his athletic performance.

¹ 2019 Journal of Chromatography A,1600,183-196.

60. They accepted that the laboratory had followed all the relevant International Standards for Testing and Investigations and the International Standards for Laboratories (ISL June 2016) and confirmed that the criteria for chromatographic-mass spectrometric analyses established in the WADA Technical Document WADA TD2015 IDCR had been met. They also do not argue that LGD-4033 is an exogenous non-threshold substance.
61. Professor Ayotte dealt with all of the points raised by the four experts comprehensively. She disagreed with the propositions that the results were unreliable because the levels were too low, or that it was not possible that the Athlete voluntarily took the prohibited substance because that would require the daily use of 10 mg for 6 to 10 weeks and the Athlete had negative tests 66 days before 18 April 2019 (11 February 2019) and 10 days after 18 April 2019. As to the latter point her opinion was that the identification of a prohibited substance or its metabolite is a sign of past use, but it is not possible from a single urinary test result to deduce the dosage taken or the frequency and duration of use. In her opinion it is reasonable to assume that the presence of the metabolite in the urine sample is at the end of the excretion period and that a sample collected 10 days later would therefore be negative and it would be possible to use LGD-4033 in the 66 days preceding the collection of the sample with the observed results.
62. She explained that LGD-4033 is a SARM falling under the category s1.2 Other Anabolic Agents of the WADA Prohibited List and its use is banned in all sports. Like anabolic androgenic steroids SARMs are prohibited at all times. Their identification in an Athlete's sample at any level is to be reported as an AAF. They are advertised on black-market websites as providing the benefits of anabolic steroids without the side effects. The laboratory analyses approximately 35,000 samples per year and 32 have been reported from November 2015 to the end of 2019 for the presence of LGD- 4033, mostly for its dihydroxylated metabolite.
63. In order to report an AAF for a non-threshold substance such as LGD-4033, the applicable confirmation procedure must allow the unequivocal identification of the substance (or its representative metabolite or characteristic marker) at any concentration, in compliance with the identification criteria for chromatographic-mass spectrometric analyses established in the WADA Technical Document TD2015

IDCR. She pointed out that the two dimensional identification criteria and the analytical protocols in WADA Technical Document TD2015 IDCR were followed. The metabolite was unambiguously identified in the sample by comparison to the reference urine sample and not only did it come out at the same chromatographic retention time, but its three characteristic ion-transitions were found in the reference urine sample in the same relative abundances. The laboratory did not have to provide a concentration when reporting an AAF but in this case upon request by the AIU it did so on an approximate and rough estimate basis showing 16pg/ml which was for the parent compound, not the metabolite.

64. The language of the relevant passage in the WADA Technical Document TD2017 MRPL (and 2018 MRPL) (§2.0) concerning the LOD of the initial testing procedure is that it is not necessary to estimate the LOD for all potential metabolites of a given non-threshold substance such as LGD-4033. In the absence of a suitable reference material for a specified non-threshold substance or its representative metabolite or marker, the LOD will be assumed to be similar to that of the related prohibited substance of the same class. There are no reference materials available for the metabolite since it has not been synthesized. The laboratory therefore used its own method involving successive dilutions of the reference standard for the parent compound in accordance with the ISL.
65. Paragraph 5.3.4.4.1.2 FN 32 of the WADA International Standard for Laboratories November 2019 (page 74) makes it clear that *'... a Sample is reported as an Adverse Analytical Finding for a Non-Threshold Substance at concentrations lower than the estimated LOD of the Initial Testing Procedure. Furthermore, since LOD values are estimations based on Analytical Method validation with a limited number of representative samples, a Laboratory may be able to effectively confirm the presence of a target Non-Threshold Substance (or its representative Metabolite or characteristic Marker) in a given Sample at levels below the validated LOD'*.
66. There is no relevance for an LOQ for the identification of a non-threshold substance. The Ventura method was significantly different to the one used in the laboratory (LCMS/MS methodology) and had no application. In her opinion there was no doubt about the reliability of the metabolite finding reported following the analysis of the Athlete's urine sample.

67. Her opinion is fully supported by the letter containing the expert opinion of Dr Osquel Barroso, the WADA Senior Deputy Director Science Laboratories dated 3 February 2020.

E. Decision

68. The Panel is comfortably satisfied that the Presence of the metabolite has been proven because the criteria stipulated in the WADA Technical document TD2015 IDCR were fully met. There is no evidence to show that the results were unreliable and the Panel accepts Professor Ayotte's evidence, fully supported by Dr Barroso's letter of 3 February 2020 that the Athlete's sample contained the prohibited substance.

69. LGD-4033 is a non-threshold substance at any concentration and an AAF is to be reported when the identification criteria are met.

70. The laboratory set its LOD (for both the initial testing procedure and the confirmation procedure using its LCMS/MS method) according to the requirements of the WADA Technical Document TD2018 MRPL (minimum required performance levels for detection of non-threshold substances) and the WADA Technical Document TD2015 IDCR (minimum criteria for chromatographic-mass spectrometric confirmation of the identity of analytes for doping control purposes). As the expert evidence of Professor Ayotte and Dr Barroso makes clear it is essential that an AAF for a non-threshold substance with no reporting limit has through the confirmation procedure been unequivocally identified, at any concentration, in compliance with the criteria established in the TD2015 IDCR. That is what has been demonstrated in this case.

71. Having decided that the Panel has jurisdiction to decide on the subject matter of this dispute it finds that the Athlete has committed Anti-Doping Rule Violations pursuant to Article 2.1 ADR and Article 2.2 ADR. Although this is a case principally about Presence which has been established to the Panel's comfortable satisfaction and the charge of an Anti-Doping Rule Violation by Use does not add anything in terms of potential sanction, the Panel is also comfortably satisfied that this is also

established. They are both strict liability offences which are not dependent on the Athlete's knowledge.

F. Sanction

72. Article 10.2 ADR provides the sanctions to be imposed for Anti-Doping Rule Violations under Article 2.1 ADR (Presence) and Article 2.2 ADR (Use) are as follows:

"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method"

73. This is the Athlete's first Anti-Doping Rule Violation. The period of Ineligibility to be imposed for a violation under Article 2.1 or 2.2, that is the Athlete or other Persons first Anti-Doping Rule Violation shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

"10.2.1 The period of Ineligibility shall be four years where:

*a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation **was not intentional**. (emphasis added).*

...

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct that he 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 the period of ineligibility where there is no Fault or Negligence

If an Athlete or other Person establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated."

74. The definition of no Fault or no negligence² provides that it is a prerequisite that the Athlete must demonstrate how the prohibited substance entered his system:

*"No Fault or No Negligence: the Athlete's or other Person's establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had Used or been administered the Prohibited Substance or Prohibited Method, or otherwise violated an anti-doping rule. Except in the case of a Minor, **for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his system.**" (emphasis added).*

75. For the purpose of satisfying this burden a whole series of Court of Arbitration for Sport (the "CAS") cases have held that an Athlete must establish how the substance entered his/her body.³

76. In *CAS 2016/ A/4377 WADA v IWF & Alvarez* (paragraph 51) the CAS stated that an Athlete must demonstrate how the prohibited substance entered her system to rebut the presumption of intentionality:

"The Athlete bears the burden of establishing that the violation was not intentional within the...meaning [of Article 10.2.3], and it naturally follows that the athlete must also establish how substance entered her body. The Athlete is required to prove her allegations on the "balance of probability".⁴"

77. In *CAS 2016/A/4845 Fabien Whitfield v FIVB* (at para 45) the CAS panel stated that an Athlete must establish the source of the prohibited substance found in the sample in order to be able to demonstrate that a violation was not intentional under Article 10.2.1 ADR:

² See p 71 of the IAAF Anti-Doping Rules 2019

³ See also decisions of the UK National Anti-Doping Panel: *UKAD v Graham*(259), *UKAD v Williams*(251), *UKAD v Songhurst* (248)

⁴ See also *CAS 2016/A/4662 WADA v Caribbean RADO & Greaves* (para 36) and *CAS 2016/A/4563 WADA v Egy NADO & Elsalam* (para 53).

"Based on CAS (and national anti-doping tribunal) jurisprudence and the provisions of FIVB MADR, to obtain any reduction of his presumptive four-year suspension under Article 10.2.1 for testing positive for a non-Specified Substance pursuant to Articles 10.2.2, 10.4, or 10.5 the Appellant is required to prove by a balance probability the source of the prohibited substances in his system."

78. Even where CAS panels have left open the theoretical possibility that an Athlete might be able to rebut the presumption of intentionality without establishing the origin of the substance, it has been made clear that this will be the case only in the most exceptional circumstances -see *CAS 2016 /A/4534 Villanueva v FINA* where the CAS panel referred to the "*narrowest of corridors through which such an athlete must pass to discharge the burden that lies upon him*" (paragraph 37) and *CAS 2016/A/4919 WADA v WSF & Iqbal* where the panel said that "*in all but the rarest cases the issue is academic.*" (paragraph 66).
79. Based on the foregoing it is clear that the Athlete must, save in the rarest of cases, demonstrate on the balance of probabilities how the metabolite entered his system to show that the violations were not intentional and thereby obtain any reduction in the period of Ineligibility below the mandatory four-year period. To do so the Athlete must present cogent and sufficient evidence to satisfy the Panel to the requisite standard.
80. Evidence establishing that a scenario is merely possible is not enough to establish the origin of the prohibited substance (see *CAS OG 16/025 WADA v Yadav & NADA* which "*found the sabotage(s) theory possible, but not probable and certainly not grounded in any real evidence*"(paragraph 7.27)).
81. Ultimately "*the nature and quality of the defensive evidence put forward by the athlete, in light of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably) so that the athlete's defence is more likely than not [to be] true.*"
82. This was supported by the CAS panel in *2014 /A/3820 WADA v Damar Robinson & JADCO*, which concluded: "*In order to establish the origin of a Prohibited Substance*

by the required balance of probability, an athlete must provide **actual evidence** as opposed to mere speculation.”(paragraph 80).

83. A case in an appeal to CAS concerned an explanation of deliberate spiking (CAS 2010/A/2230 *International Wheelchair Basketball Federation v UK Anti -Doping & Gibbs*). The athlete produced witness evidence from a third party who admitted spiking the athlete’s drink without his knowledge. This was not believed and the athlete’s pleas in mitigation were dismissed at first instance.
84. This was upheld on appeal at national level and there followed an appeal to CAS on grounds that the sanction imposed was incompatible with EU law including the European Convention on Human Rights, and was disproportionate.
85. In dismissing the appeal before CAS the sole arbitrator expressed the athlete’s burden in the following terms (paragraph 11.12):

“To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination- two prevalent explanations volunteered by athletes for such presence- do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body. The Sole Arbitrator has sympathy with athletes who are - as he accepts they can be - victims of spiking without evidence to prove its occurrence; but the possible unfairness to such athletes is outweighed by the unfairness to all athletes if proffered, but maybe untruthful, explanations of spiking are too readily accepted. ”

86. This makes clear the Athlete’s burden to provide cogent, credible and specific evidence to support innocent or negligent explanations. No such evidence has been provided in this case. Where an Athlete is unable to establish the origin of an unspecified substance there is a presumption of intentional doping, absent very exceptional circumstances. The Panel finds that those circumstances are not present in the case before it and that there is no basis to apply the “No Fault or Negligence” provisions. Mr Boone McLaughlin did not provide any direct evidence to support the Athlete’s case. There is no evidence to show that the body building supplements that he was allegedly taking contaminated any items used by the Athlete or the

area where the urine sample was collected. The Athlete's case on this issue amounts to mere speculation.

87. It follows that the Panel cannot be satisfied that the Athlete has demonstrated on a balance of probabilities that the Anti-Doping Rule Violations were not intentional and a mandatory period of Ineligibility of four years must be imposed pursuant to Article 10.2.1(a) ADR.

88. The Panel Orders as follows:

1. The Panel has jurisdiction to decide on the subject matter of this dispute.
2. The Athlete has committed Anti-Doping Rule Violations pursuant to Article 2.1 and/or Article 2.2 ADR.
3. A period of Ineligibility of four years is imposed upon the Athlete commencing on the date of Panel's award.
4. The period of Provisional Suspension imposed on the Athlete from 31 May 2019 until the date of the Panel's award shall be credited against the total period of Ineligibility, provided that it has been effectively served by the athlete.
5. The Athlete's results obtained between 18 April 2019 and 31 May 2019 shall be disqualified with all resulting consequences including the forfeiture of any medals, titles, awards, points, prize and appearance money.
6. No contribution is ordered to be paid by the athlete to the IAAF on account of the latter's legal costs having regard to all the circumstances and the Athlete's limited resources.
7. This decision may be appealed to the CAS in accordance with Article 13 ADR and its subsections.
8. The award shall be publicly disclosed by the AIU in accordance with Article 14.3.1 ADR. At a minimum this means that information regarding this matter shall be placed on the AIU website or published through other means.

Raj Parker

Raj Parker (Chair on behalf of the Panel)

London, UK

10 March 2020





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