

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION**

**UNITED STATES ANTI-DOPING AGENCY,**  
*Claimant*

**v. Case NO. 01-19-0002-1440**

**DANIEL BOND,**  
*Respondent*

**FINAL AWARD**

WE THE UNDERSIGNED PANEL, having been designated in accordance with USADA Protocol for Olympic and Paralympic Movement Testing ¶13 Section g and having been duly sworn and having duly heard the allegations and proofs of the Parties, hereby AWARD as follows:

**I. Background**

Daniel Bond is an amateur athlete who obtained a license from U.S. Cycling to compete in various races at the local and state level in Florida. U.S. Cycling is the National Governing Body (NGB) for cycling in the United States. On April 11, 2019, a USADA Doping Control Officer went to Mr. Bond's home, told Mr. Bond that he had been selected for out-of-competition testing and asked Mr. Bond to provide a urine sample. Mr. Bond said that he was busy on an important call and told the DCO to come back later. Mr. Bond did not provide the requested urine sample.

By letter dated June 26, 2019, USADA charged Mr. Bond with a doping violation pursuant to Article 2.3 of the World Anti-Doping Code, Annex A to the USADA Protocol for Olympic and Paralympic Testing which reads as follows:

“Evading *Sample* collection, or without compelling justification refusing or failing to submit to *Sample* collection after notification as authorized in applicable anti-doping rules.”

On July 3, 2019, Bond contested the charge and requested a hearing. A three member panel was appointed and a hearing was held on February 14, 2020, where evidence was adduced and arguments were made by the parties with Mr. Bond representing himself and Adam Klevinas, Esq. representing USADA at the hearing.

## **II. Facts**

In a statement provided by John Nieves, the USADA Doping Control Officer who contacted Mr. Bond on April 11, 2019, Mr. Nieves said that he arrived at Mr. Bond’s residence at 7:55 am on April 11, 2019; that he knocked on the door and Mr. Bond answered; that he identified himself as a USADA DCO and notified Mr. Bond that he had been selected to provide an out-of-competition urine sample. Mr. Nieves also said that “Mr. Bond informed me that he was busy on a conference call and was not

available to provide the urine sample as requested. Mr. Bond told me to come back another day. I informed Mr. Bond that he was required to comply and provide a urine sample as requested because he had been notified of his selection to provide a sample. I also informed Mr. Bond, if he failed to comply, he may be subject to an anti-doping rule violation or sanction. Mr. Bond then slammed the door in my face and went back inside his house. To the best of my recollection, the total duration of my interaction with Mr. Bond was approximately 30 seconds to a minute." At the hearing, Mr. Nieves reiterated that before Mr. Bond shut the door he told Mr. Bond that sanctions were possible if he failed to provide the sample.

Mr. Nieves then returned to his car and called USADA's Legal Affairs and Investigation Counsel. While he was on the phone, he could see Mr. Bond looking out the window several times. Legal Counsel told Mr. Nieves to knock on the door and try again to get a sample. Mr. Nieves said he knocked again but Mr. Bond did not answer. Mr. Nieves concluded the attempt at 8:20 am.

USADA also submitted the statement of Nadia Soghomonian, the USADA Legal Affairs and Investigation Counsel to whom Mr. Nieves

spoke. She testified that on April 24, 2019, USADA notified Mr. Bond of an alleged anti-doping rule violation. She said that in response, on May 6, 2019, Mr. Bond provided a statement regarding his actions on April 11, 2019. But she said that when she tried to corroborate Mr. Bond's statement about the conference call he had been on and what he was doing when the DCO arrived, "Mr. Bond could not, both before being charged by USADA, and after, provide corroboration to his statement." Thus, on June 26, 2019, USADA charged Mr. Bond with an anti-doping violation for refusing to submit to sample collection.

Ms. Soghomonian added that "between April 11, 2019 and June 26, 2019, as well as thereafter, I was unable to obtain any information that would allow me to corroborate or confirm Mr. Bond's claim that he was unavailable to provide a urine sample to DCO Nieves at approximately 8:00 am on April 11, 2019 because he was on an important work-related call at that time."

Sean Sweeney, a USADA investigator spoke with Mr. Bond on May 29, 2019 to ask Mr. Bond about the "statement that he provided to USADA on May 6, 2019." Mr. Sweeney stated that during the phone call with Mr. Bond, "Bond indicated that, on the morning of April 11, 2019, when

USADA Doping Control Officer (DCO) John Nieves notified him that he had been selected to provide a urine sample, he was on a conference call via Skype with his employer that was nearly over, and that he told the DCO to come back later. According to Mr. Bond, this was the extent of his interaction with the DCO, which he said lasted less than five seconds.”

Mr. Sweeney said he tried to confirm the information about what Mr. Bond had been doing and to whom Mr. Bond had been talking but Mr. Bond said he could not recall who was on the call. Mr. Sweeney said Mr. Bond never gave him the phone numbers of the people that Mr. Bond had thought might be on the call. With regard to his failure to provide phone numbers, Mr. Sweeney said that Mr. Bond told him, “that he would prefer to keep his work life separate from his hobby and that he did not want his hobby to interfere with his career.”

Mr. Sweeney then stated that, “during my May 29, 2019 call with Mr. Bond, and in all email and text exchanges between myself and Mr. Bond, both before and after he was charged by USADA with an anti-doping violation on June 26, 2019, I was unable to obtain any information that would allow me to corroborate or confirm Mr. Bond’s claim that he was on a

work-related call at approximately 8:00 am on April 11, 2019 and that as a result, he was unable to provide a urine sample to DCO Nieves.”

At the hearing, USADA called Mr. Bond as a witness. He testified that he heard the DCO knock at the door; that he could not recall whether he was on his phone or his computer on the call; and that he does not usually interrupt calls to answer the door but he did so that day. He said he probably put the call on mute when he answered the door.

When he answered the door, he said he does not recall the DCO telling him that there would be consequences if he failed to provide a sample given that he had been notified. Mr. Bond also admitted that when the DCO came to the door, he knew the call was ending and he testified that he should have told the DCO to wait a few minutes but he did not.

Mr. Bond said he did not see or hear the DCO return to his door. When asked why he did not go out and get the DCO when the call ended, Mr. Bond said that by that time the car was gone.

Mr. Bond testified that the call he was on that day was not an emergency. Mr. Bond also said he did not give Sweeney the phone numbers of the people who were on the call. Mr. Bond said that even if he

could be banned for life, the idea of giving USADA the phone numbers of his employer was a “hard no.”

Mr. Bond admitted that the DCO identified himself; that he advised Mr. Bond that he had been selected for out-of-competition testing; that he said he was busy on a call and not available; that he told the DCO to come back another time or another day. But Mr. Bond said the DCO did not tell him that once he had been notified he had to be tested or that there could be sanctions.

In his May 6, 2019 statement to USADA, Mr. Bond wrote as follows: “On the morning of April 11<sup>th</sup> I was in a meeting with my senior leadership. During my call... an individual knocked on my door. While on the call, I quickly answered the door.... The individual told me he was from USADA and I was selected for testing. Unfortunately, due to the important nature of my current conference call, I could not disengage from my current meeting. I informed the individual that I was on a call and to come back later. At this time, I went back to my office and continued my meeting. I was able to see the individual’s truck in my driveway and he was there for the next several minutes.”

Mr. Bond also said in his statement that by the end of his meeting, the individual was gone and that though USADA has stated, "that he came back and knocked on my door. I was unaware of this. Also, the individual stated that he attempted to call me. It appears that the telephone number in my file is not correct."

Mr. Bond testified further that "In the last few days, I have read up on my responsibilities and will continue to verse myself on USADA procedures. I have also since learned that I could have invited the USADA individual into my house and had him wait while I finished my call; this did not occur to me at the time."

"In regards to the importance of my meeting that I was on, . . . I meet with leadership that is on the [senior] level. It was simply not possible for me to interrupt the meeting and excuse myself without facing repercussions to my career."

"I understand that any sanctions proposed by USADA should not affect my ability to train and be a part of the community but, in reality, it would most certainly have a detrimental impact. I am not even sure why/how I was selected for testing. Like I said, I do not compete on a high



level and I do these sports as my hobby. I have won around \$100 in my bike races, so I don't really make money on this."

"Even though I have been around runners, bikers, and swimmers for the last ten years, I have not had any interactions or much education about USADA. Keep in mind, we are all amateurs and no one is competing on the regional, national or international level.... I have never even seen USADA until a few weeks ago at my house."

Tulin Bond, the respondent's wife, testified that on April 11, when the DCO came to their house, her husband was on the phone but she heard him answer the door; but she did not hear what was said. She did not hear the door slam. She also said that she has not seen him take drugs. She said too that she did not know whether he was on the telephone or on his computer that morning. Nor did she know when he finished the call; but she thought he probably finished the call after 8:00 am. She does not know where in the house he went after he finished the call but it would depend on where he was in the house whether he could hear another knock at the front door. She testified that she did not hear a second knock at the door.

### **III Analysis**

#### **A. Burdens of Proof**

USADA must prove an anti-doping violation to the “comfortable satisfaction” of the Panel. Annex A, Article 3.1 USADA Protocol. And, an athlete who must rebut a presumption or establish special facts must do so by a “balance of probability”. *Id.*

#### **B. Applicable Legal Principles**

##### **1. Has the Violation Been Proven?**

USADA argues that to prove a violation in this case it need only show that 1) Bond was notified that he was required to give a sample; 2) that testing Bond was authorized under the Protocol; and 3) that Bond either intentionally or negligently failed to provide a sample. USADA contends all three factors have been established here. The Panel agrees.

There is no dispute that Mr. Bond was told that he had been selected for out-of-competition testing.

The question whether Mr. Bond could be tested under the Protocol is readily apparent. Mr. Bond had a license from U.S. Cycling. Paragraph 3 of the USADA Protocol lists the Athletes subject to testing:

“The USOC, NGBs, other sports organizations and the Code authorize USADA to test, investigate and conduct other anti-doping activities concerning the following athletes:

- a. Any *Athlete* who is a member or license holder of a NGB.”

Thus, USADA had authority to test Mr. Bond.

But Mr. Bond contends that he does not know why or how he was selected because he was just an amateur who does not make money from participating in competitions. Paragraph 6 of the Protocol describes USADA’s authority to select athletes for testing:

“...USADA shall have the authority to determine which athletes will be selected for out-of-competition testing by USADA.... USADA retains the right to test any athlete subject to testing as provided in Section 3 that it chooses, with or without cause or explanation.”

Thus, Mr. Bond’s amateur status has no bearing on whether he could be selected for testing.

The third factor that must be proved is that the Athlete either intentionally or negligently failed to provide the sample. USADA argues that Mr. Bond’s conduct in this case was intentional and the Panel agrees. The Doping Control Officer told Mr. Bond that he had been selected and

the Doping Control Officer warned Mr. Bond that he would face consequences if he failed to give a sample once he had been notified. Of course, Mr. Bond testifies that the DCO did not warn him of the consequences but the Panel believes the testimony of Mr. Nieves. And, in addition to that, under the USADA Protocol whether or not the DCO warned Mr. Bond of the consequences, it is the Athlete's duty to know what constitutes an anti-doping rule violation:

“Athletes or other persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the prohibited list.

Annex A, Article 2, USADA Protocol. Thus, the Panel is of opinion that the rule violation has been established.

## **2. Was There A Compelling Justification for not Giving the Sample?**

Mr. Bond contends that he had compelling justification for his failure to provide the urine sample because he was on an important work related call when the DCO showed up at his house. USADA contends that Mr. Bond's explanation fails to establish compelling justification. The Panel agrees with USADA.

For one thing, Mr. Bond himself said that the call he was on was not an emergency. He also said that when the DCO arrived the call was nearing its conclusion. Further he has admitted that he could have asked the DCO to come in a wait a few minutes and the sample could have been provided.

Moreover, the cases cited by USADA refute Mr. Bond's argument because those cases basically require that "whenever physically, hygienically, and morally possible, the sample should be provided despite objections by the Athlete." *Azevedo v FINA*. In addition, those cases require that the exception be narrowly construed and used sparingly or else the charge of failure to provide a sample will be eroded.

USADA relies on *Jones v. Welsh Rugby Union*, a case in which the Panel rejected the claim of compelling justification in a situation where the athlete was an amateur, the athlete had never received anti-doping education, the athlete had never been tested before, and the athlete's failure to report to work after his Rugby match could have had serious financial consequences for him and for his family's business. The facts in the present case do not differ significantly from those in *Jones*.

USADA also relies on *BBSA v. Howe* where a claim of compelling justification was also rejected. There, the athlete was notified at 5:35 a.m. that he had to provide an out-of-competition sample. The athlete, who was a Royal Marine said “no” because he had to be at work at 6:00 a.m. But, it turned out that he did not need to be there until 6:55 which meant he had time to give the sample and the athlete made no effort to find a way to provide the sample. USADA argues that likewise Bond could have taken other steps to provide the sample like asking for a short recess or having the DCO wait for a break in the call. Given that Bond took no such steps and given that Bond himself now admits that he could have acted differently, USADA argues that the claim of compelling justification must be rejected. The Panel agrees that Mr. Bond has not demonstrated that he had compelling justification for not providing the sample when notified.

### **3. What Is The Appropriate Sanction?**

We turn now to the sanction that USADA seeks in this case: a four year suspension starting with the date of the Panel decision. This is the penalty set forth in Annex A, Article 10.3.1 of the USADA Protocol:

For violations of Article 2.3 or Article 2.5, the ineligibility period shall be four years unless, in the case of failure to submit to sample collection, the athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined

in Article 10.2.3), in which case the period of ineligibility shall be two years.

Article 10.2.3 provides as follows: "As used in Articles 10.2 and 10.3, 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.

Article 10.11 Commencement of Ineligibility Period. Generally, "the period of ineligibility shall start on the date of the final hearing decision providing for ineligibility."

USADA argues that not only did Mr. Bond lack a compelling justification for his conduct, he simply would not cooperate with USADA's efforts to corroborate his assertions that he was busy on an important telephone call with key people at the company for which he worked. Further, USADA notes that Mr. Bond gave three different explanations for why he was on the April 11 call. One was that he was talking to senior leadership in the company; another was that he was talking about how the company could change its process for handling storms; and the third was that he was dealing with a catastrophic situation. Nor can the Panel overlook that fact that Mr. Bond very clearly said that he simply did not want USADA investigators contacting his employer.

The situation we have in this case is that the default penalty for the violation is four years but Mr. Bond asks the Panel for a lesser sanction. He says that he does not think a four-year sanction is appropriate in his case because he was "busy working on a call during the time the officer arrived at" his house and that he can show this by 1) time clock information from his employer; 2) paystub information to validate the hours for that day; 3) email communications showing he was working at that time; 4) the testimony of his wife Tulin that he was on the phone. He says too that his interaction with USADA was less than ten seconds and that he did not fully understand all the repercussion of telling the DCO to come back later.

He says he would be heartbroken not to be able to run and ride. He asks why ban him. In arguing for a lesser sanction, Mr. Bond called the Panel's attention to a recent report from the USADA website about a cyclist who accepted a two-year sanction after his refusal to provide a sample. But USADA argues that case differs from the present dispute because there the athlete cooperated fully with investigators and corroborated his explanations for failing to provide the sample. Thus, USADA submits, Mr. Bond cannot fairly rely on that case. USADA submits that Bond has shown no reason why he should not be sanctioned for the 4 years set forth in the




Applicable Rule and USADA asks that sanction begin with the Panel's decision.


#### IV Conclusions and Award

Having considered all the evidence, and the citations to authorities, and the argument and submissions of the parties, the Panel is of opinion that Mr. Bond has violated Article 2.3 of the World Anti-Doping Code; that pursuant to Article 10.3.1. of the Code the penalty for that violation is four years; and that pursuant to Article 10.11 of the Code that penalty shall commence with the entry of this Final Award.

**It Is So ORDERED this 26<sup>th</sup> Day of March 2020.**

  
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**Mark Muedeking**

  
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**Barbara Reeves**

  
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**John Charles Thomas, Chair**