

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

IN THE MATTER OF SPORT IRELAND

AND

[IS-7145]

DECISION

A. INTRODUCTION

1. This is a reasoned decision of the Irish Sport Anti-Doping Disciplinary Panel (the “Panel”) in proceedings by Sport Ireland against [IS-7145] (“Mr [IS-7145]”) under the Irish Sports Council Anti-Doping Rules 2015 (the “Rules”).
2. Mr [IS-7145] is a [...] -year-old amateur cyclist who, on [...] 2019, competed in the [...]. Sport Ireland alleged that Mr [IS-7145] committed anti-doping rule violations (“ADRVs”) pursuant to Article 2.1 of the Rules by virtue of the presence of Prohibited Substances (or one or more of their Metabolites or Markers) in a sample provided by Mr [IS-7145] in In-Competition Testing on 15 September 2019. Mr [IS-7145] denied the ADRVs.
3. The Panel heard the case by way of remote hearing on 3 September 2020 (the “Hearing”). The decision of the Panel, and the reasons underpinning that decision, are set out below.

B. RELEVANT BACKGROUND

4. Mr [IS-7145] provided a urine sample during in In-Competition Testing on [...] 2019, in accordance with the Rules, following his participation in the [...] [...]. Mr [IS-7145] urine sample was split into two separate bottles, an A Sample (reference number A4401552) and B Sample (reference number B4401552), as indicated in the Doping Control Form signed by Mr [IS-7145] (the “Samples”). Mr [IS-7145] A Sample was tested on behalf of Sport Ireland by the World Anti-Doping Agency (“WADA”) accredited laboratory *Deutsche Sporthochschule Köln Institut für Biochemie* in Cologne, Germany.
5. The analytical report produced by *Deutsche Sporthochschule Köln Institut für Biochemie*, dated 28 October 2019, indicated the presence of the following Prohibited Substances in Mr [IS-7145]’s A Sample: epioxandrolone, oxandrolone, 18-noroxandrolone and boldenone and/or boldenone metabolite(s), each of which are listed as anabolic agents under S.1.1. of the WADA Prohibited List.

6. Sport Ireland issued its Certificate of Initial Review of Mr [IS-7145]'s A Sample on 4 November 2019. The Certificate confirmed that the review conducted by Sport Ireland under Article 7.2 of the Rules did not reveal an applicable Therapeutic Use Exemption or a departure from the International Standard for Testing and Investigations or the International Standard for Laboratories in force at the time of the test.
7. By letter dated 4 November 2019, Sport Ireland notified Mr [IS-7145] of the alleged violation of the Rules by virtue of the presence of epioxandrolone, oxandrolone, 18-noroxandrolone and boldenone and/ or boldenone metabolite(s) in his A Sample. In this letter to Mr [IS-7145], Sport Ireland explained the ADRVs that Mr [IS-7145] was alleged to have committed as well as the potential sanctions (known as Consequences) that may apply for ADRVs, noting in particular that if Mr [IS-7145] could establish that the violations were not intentional, a ban (or period of Ineligibility) of 2 years would apply, otherwise a ban of 4 years applies. Sport Ireland's letter informed Mr [IS-7145] of his provisional suspension from 5 November 2019, pending the resolution of his case. The letter advised Mr [IS-7145] that he could elect to have his B Sample tested and, in a section marked "Your Response", the letter set out the options open to Mr [IS-7145] (in terms of the next steps that he could take), notifying him that he must contact the Sport Ireland Anti-Doping Unit in writing to confirm his response to the charge by 18 November 2019.
8. By letter dated 15 November 2019, Mr [IS-7145] denied the ADRVs, requested that his B Sample be tested at the earliest opportunity, and requested that he be provided with a copy of the technical materials from the laboratory's analytical report. Mr [IS-7145] further indicated that he had taken "various multi-vitamins, creatine, protein, magnesium, Glutamine, zinc, L-Arginine, pre-workout and a number of other over the counter supplements ordered online or from numerous health shops" and offered to provide Sport Ireland with a sample of the daily products he takes.
9. By letter dated 22 November 2019, Sport Ireland acknowledged Mr [IS-7145]'s request for a B Sample analysis, informing Mr [IS-7145] that the laboratory had advised that the analysis would take place on 2 December 2020. In reference to Mr [IS 7145]'s indication that he had been taking a number of substances ordered online and from numerous health shops, Sport Ireland's letter explained that the Rules allow for reduced sanctions in certain circumstances which involve "Contaminated Products", as defined in the Rules. The letter explained that, pursuant to Article 10.4.1.2 of the Rules, if Mr [IS-7145] could establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the ban will range from 0-2 years depending upon his degree of fault. Sport Ireland's letter advised Mr [IS-7145] of certain evidence that may be relevant in establishing a

Contaminated Product defence and informed Mr [IS-7145] of his entitlement to appeal his provisional suspension if he could establish that the violation is likely to have evolved from a Contaminated Product. By email dated 11 December 2019, Sport Ireland provided to Mr [IS-7145] the A Sample laboratory documentation package and the B Sample analytical report, together with a statement of an independent witness. The B Sample analytical report produced by *Deutsche Sporthochschule Köln Institut für Biochemie*, dated 5 December 2019, confirmed the A Sample results.

10. By letter dated 13 December 2019, Sport Ireland referred the matter to the Panel. Under Rule 6.2 of the Irish Sport Anti-Doping Disciplinary Panel Rules (the "Panel Rules") the Panel has the power to hear and determine all issues arising from any matter which is referred to it pursuant to the Rules. In particular, the Panel has the power to determine whether an ADRV has occurred and if so to determine and impose the appropriate sanctions in respect of such ADRV on the Athlete concerned. Notably, the Panel has wide powers to "*conduct such enquiries as appear necessary or expedient in order to ascertain the facts*" (Rule 6.2.4 of the Panel Rules) and the power "*to decide on the admissibility, relevance and weight of any evidence (including the testimony of any fact or expert witness)...*" (Rule 8.2 of the Panel Rules). These powers are wide and enable the Panel to ensure that the parties to the Hearing have the fullest opportunity to make their case in the plainest and clearest way possible.
11. By letter dated 20 December 2019, Mr Andrew Nugent, Registrar to the Panel (the "Registrar"), wrote to Mr [IS-7145] and Messrs Aidan Healy and Niall Sexton of DAC Beachcroft, legal advisers to Sport Ireland, summarising the alleged violation of the Rules and informing Mr [IS-7145] of the persons appointed to the Panel for the determination of this matter. The Registrar's letter advised that should either party have any objection to the persons appointed to the Panel they were invited to inform the Registrar by 10 January 2020.
12. A directions hearing took place by way of conference call on 14 January 2020, during the course of which the following directions were agreed: 1. DAC Beachcroft, on behalf of Sport Ireland, agreed to deliver written submissions to the Registrar and Mr [IS-7145] on or before 7 February, together with details of all witnesses intended to be call at the Hearing; and 2. Mr [IS-7145] agreed deliver written submission in reply on or before 6 March 2020, together with details of all witnesses intended to be called at the Hearing. These directions were set out in a letter from the Registrar to Mr [IS-7145] and Messrs Aidan Healy and Niall Sexton of DAC Beachcroft dated 31 January 2020.
13. Sport Ireland filed initial Written Submissions dated 5 February 2020 together with Exhibits 1 - 16 thereto. By email dated 11 March 2020, the Registrar notified DAC Beachcroft that the

Mr [IS-7145] was "awaiting results from a laboratory in Dublin which [was] carrying out tests on certain supplements for him." By further email dated 13 March 2020, the Registrar informed DAC Beachcroft that Mr [IS-7145] had confirmed that he expected to get the results "by the end of this month." In a responding email of even date, DAC Beachcroft indicated on behalf of Sport Ireland that, as a consequence of the new restrictions around Covid-19, "such a timeline may now be quite unlikely" and suggested that Mr [IS-7145] provide certain information to Sport Ireland in advance of obtaining his laboratory report.

14. By email dated 30 March 2020, Mr [IS-7145] informed the Registrar that he "remained hopeful" of receiving results from [REDACTED] of [REDACTED] by the end of March. Mr [IS-7145] explained that he had been taking a number of supplements during the weeks of training leading up to the race, some of which were obtained from the USA and were not available within the EU market. Mr [IS-7145] explained that he "thought it best to test and eliminate these particular products first" and that [REDACTED] was testing three such products from a company called Redcon that were purchased by Mr [IS-7145]'s brother in 2018 and who "passed them" to Mr [IS-7145]. These products were, as described by Mr [IS-7145]: "Tango' (a creatine supplement in powder form), 'Total War' (a pre-workout supplement in powder form) and 'Big Noise' (a pump supplement to boost the pre-workout supplement in powder form)." Mr [IS-7145] indicated that he had asked his brother to source "any receipts or confirmation of purchase" and confirmed that he did not carry out any research on these Redcon products "as they were recommended to [him] by [his] brother."
15. On 4 May 2020, Mr [IS-7145] furnished his Written Submissions and a [REDACTED] report dated 24 April 2020 in respect of the three Redcon products. The laboratory report stated that "three tubs of Redcon supplements were received from Mr [IS-7145]" on 21 April 2020 and noted that the tub of 'Total War' "was received unsealed and about 10% of the product remained". The report stated that the 'Tango' product was not analysed and that there was no evidence of anabolic steroids in the sample of the 'Big Noise' product tested. The report stated that the anabolic steroid oxandrolone was detected in the 'Total War' product, that this anabolic steroid was a "controlled substance in Ireland" and that it is "not listed in the ingredients on the Tub". In his Written Submissions, Mr [IS-7145] stated that "While [REDACTED] could not specifically detect or identify one of the substances in my urine sample (Boldenone) by qualitative testing he confirmed that it is a derivative of Oxandrolone and most certainly forms part of a single steroid." Mr [IS-7145] also submitted that [REDACTED] a "Bio Scientist [...] who deals specifically in steroid design" explained that "the combination of four steroid profiles is likely to be in one single drug (Oxandrolone)".

16. A further directions hearing took place by way of conference call on 13 May 2020, during the course of which it was agreed that DAC Beachcroft, on behalf of Sport Ireland, would deliver further written submissions to the Registrar and Mr [IS 7145] on or before 17 June 2020, in reply to the submissions and test results furnished by Mr [IS 7145] on 4 May 2020. DAC Beachcroft also undertook to write to Mr [IS 7145] setting out certain matters which might be relevant in respect of the hearing of the case, which was done by way of emailed letter dated 21 May 2020. In this letter, DAC Beachcroft requested that Mr [IS 7145] instruct [...] to send the tub of Redcon 'Total War' it analysed to Sport Ireland's laboratory, noting that (i) Sport Ireland did not agree that boldenone is a derivative of oxandrolone or forms part of a single steroid; and (ii) Sport Ireland's evidence would be that oxandrolone and boldenone have totally different chemical structures and one cannot be converted to the other. DAC Beachcroft further noted that Sport Ireland was awaiting receipts or other proof of purchase in respect of Redcon 'Total War'.
17. On 30 June 2020, *Deutsche Sporthochschule Köln Institut für Biochemie* conducted an analysis of the Redcon 'Total War' tub previously analysed by [REDACTED]. Its analytical report confirmed that oxandrolone was detected at a concentration of approximately 100 µg/g. No boldenone was detected in the supplement. A new tub of Redcon 'Total War', purchased by Sport Ireland from www.redcon1.com, was also analysed by the Cologne laboratory. The analytical report confirmed that neither oxandrolone nor boldenone were detected in the sample taken from the sealed tub of Redcon 'Total War'.
18. Sport Ireland furnished its Further Written Submissions dated 17 July 2020 together with Exhibits 17 - 35 (commencing at Exhibit 17), to be read with Exhibits 1 - 16, which were provided with Sport Ireland's initial Written Submissions dated 5 February 2020.

C. THE HEARING ON 3 SEPTEMBER 2020

19. The Hearing took place on 3 September 2020 by way of video conference. The Panel comprised Ms Helen Kilroy, solicitor (who chaired the Panel, the "Chairperson"), Dr Pat O'Neill (Medical Practitioner) and Mr Philip Browne (Sports Administrator). Mr Aidan Healy of DAC Beachcroft Solicitors represented Sport Ireland. Mr [IS 7145] represented himself. Ms Siobhan Leonard (Director of Anti-Doping & Ethics, Sport Ireland) and Mr Matt McKerrow (CEO, Cycling Ireland) also attended the hearing and Dr Hans Geyer (Deputy Head of the Cologne laboratory) joined the hearing to give evidence.
20. At the outset of the Hearing the Chairperson explained that as Mr [IS 7145] was not legally represented one of her roles in the conduct of the Hearing would be to ensure that Mr [IS 7145]

was clear as to the process and, if he had any questions, she would be happy to try and deal with them. Rule 8.1 of the Panel Rules expressly provides that each party "...shall have the right to be legally represented at a Hearing at their own expense...". While that right is absolute, it is discretionary, and for an Athlete to decide whether they will be legally represented before the Panel.

21. In carrying out its function, the Panel is conscious of the potentially serious impact that its decision may have on an Athlete. As such, whether or not an Athlete is legally represented does not change the Panel's commitment to uphold appropriate standards of fairness in the conduct of its work. Accordingly, throughout the Hearing the Panel sought to ensure that Mr [IS-7145] understood what was happening, had the chance to present his case in his own words and to ask questions. Since the Hearing, the Panel has given due consideration to Mr [IS-7145]'s evidence and submissions, as well as the submissions of Sport Ireland.

Submissions on behalf of Sport Ireland

22. Mr Healy set out the case against Mr [IS-7145] and referred to his written submissions and exhibits. Mr Healy explained that Mr [IS-7145] had tested positive for boldenone, oxandrolone, as well as two metabolites of oxandrolone (epioxandrolone and 18-noroxandrolone), in violation of Article 2.1 of the Rules. Mr Healy explained that Sport Ireland accepts that the source of the positive test in respect of oxandrolone and of its two metabolites is a Contaminated Product, as submitted by Mr [IS-7145]. However, Mr Healy stated that Sport Ireland's submission is that no evidence has been provided to explain the presence of boldenone in Mr [IS-7145]'s Samples.
23. Mr Healy explained that four separate ADRVs are alleged, relating to each of the four Prohibited Substances detected in Mr [IS-7145]'s samples. Mr Healy then explained that pursuant to Article 10.6.4.1 of the Rules, all four ADRVs shall be considered together as one single first violation and the ban to be imposed shall be based on the violation that carries the more severe sanction. Mr Healy submitted that though Mr [IS-7145] had provided an explanation in respect of three of the four ADRVs alleged, in the absence of an explanation for the presence of boldenone in Mr [IS-7145]'s Samples, the appropriate sanction is a period of Ineligibility of four years. Sport Ireland stated in their initial Written Submissions: "*Article 10.1.1 provides that the period of Ineligibility (or ban) to be imposed for a violation of Article 2.1 shall be four (4) years where the ADRV does not involve a Specified Substance, unless the Athlete can establish that the anti-doping rule violation was not intentional. None of the four substances involved in this case is a Specified Substance.*"

24. Mr Healy explained that pursuant to Article 2.1.1 of the Rules, it is not necessary that intent or fault on Mr [IS-7145]'s part are demonstrated to establish an ADRV under Article 2.1. 'Sufficient proof' of an ADRV under Article 2.1 includes "where the Athlete's B Sample is analysed and the analysis of the B Sample confirms the presence of the Prohibited Substance or any of its Metabolites or Markers found in the A Sample". Pursuant to Article 8.4.6, the laboratory is presumed to have conducted sample analysis "in accordance with the applicable International Standard for Laboratories." While this is a rebuttable presumption, Mr [IS-7145] did not raise any issues in relation to the analysis of his Samples at the Hearing or in his submissions.
25. Mr Healy then addressed Mr [IS-7145]'s Contaminated Product defence under Article 10.4.1.2 of the Rules which provides that: "In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years' Ineligibility, depending on the Athlete's or other Person's degree of Fault"(emphasis added). In this regard, Sport Ireland's Further Written Submissions (as well as Sport Ireland's letter of 22 November 2019) noted that a Contaminated Product is a product "that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable internet search" (as defined in Appendix I to the Rules).
26. Mr Healy submitted that to avail of the Contaminated Product defence in Article 10.4.1.2 of the Rules, Mr [IS-7145] must establish, (i) that he took the particular product, (ii) that this resulted in the positive tests, (iii) that the Prohibited Substances in question are not listed on the label of the product, (iv) that the Prohibited Substances in question are not disclosed in information available in a reasonable internet search and (v) that he carried out a reasonable internet search prior to taking the product and otherwise bears No Significant Fault or Negligence. Under Article 8.4.2 of the Rules the burden of proof is on Mr [IS-7145] and is on the balance of probability.
27. Mr Healy submitted that, though Mr [IS-7145] indicated in correspondence that he had taken a number of products and over the counter supplements ordered online or from health shops, Mr [IS-7145] did not declare that he had taken any such medications/supplements in the previous seven days as required by the relevant portion of the Doping Control Form which he completed on 15 September 2019.
28. Mr Healy referred to Sport Ireland's Supplement Use in Sport guidelines (the "Guidelines"), which refer to the fact that reported contamination rates of nutritional supplements currently sit around 10 - 25%. He noted that the Guidelines recommend: (a) a 'food first' approach,

advising that any decision to use supplements should stem from a health or performance question and not a marketing claim; (b) that Athletes “*assess the need*” for supplements prior to use; (c) that Athletes should seek advices from a suitably qualified person, such as a nutritionist or dietician, before taking supplements; and (d) that a supplement should be batch tested to help minimise the risk of contamination.

29. Mr Healy lead the attendees through Sport Ireland’s Further Written Submissions, noting the chronology of correspondence that passed between Mr [IS 7145] and the Registrar in respect of the three particular Redcon products identified by Mr [IS 7145], and which he sent for laboratory testing to ██████████ ‘Tango’, ‘Big Noise’ and ‘Total War’. Mr Healy explained that the laboratory report obtained by Mr [IS-7145] identified oxandrolene in the unsealed tub of Redcon ‘Total War’. However, Mr Healy submitted that Sport Ireland does not accept the explanation of ██████████ relied upon by Mr [IS-7145] in his Written Submissions that the four substances detected in Mr [IS-7145]’s sample were likely to be from one single substance, oxandrolene. ██████████ did not give evidence at the Hearing. Mr Healy further submitted that Sport Ireland also contests Mr [IS-7145]’s submission that [...] [...] who also did not give evidence at the Hearing, indicated to him that boldenone is a derivative of oxandrolene and forms part of a single steroid.

30. Mr Healy noted Mr [IS-7145]’s written submission that, as the detected Prohibited Substances were found historically in numerous food types, his only option was to analyse the supplements as it would have been impossible to trace anything through food previously consumed. Sport Ireland’s Written Submissions noted that Mr [IS-7145] had produced no evidence in this regard and the suggestion that the positive tests could have arisen via food he ingested was speculative at best:

“... Sport Ireland does not therefore see the need to address this suggestion any further, except to point to the following:

- a. Boldenone is an anabolic androgenic steroid and synthetic derivative of testosterone that was originally developed for veterinary use but has since become one of the more common performance-enhancing drugs that athletes test positive for in sport. With a chemical structure that’s nearly identical to testosterone, boldenone can stimulate protein synthesis and the release of erythropoietin in the kidneys. To our knowledge, it is not authorised for use on humans.*
- b. To suggest it is present in the Irish or Northern Irish food chain would be a very serious matter indeed. Each EU Member State is required to implement a residue monitoring plan and to submit their programmes annually to the European Commission for approval. For*

example, Ireland's National Residue Control Programme ("NRCP") for 2018, the latest available, was approved by the European Commission. Third Countries wishing to export animal products to the EU are similarly required to satisfy the European Commission that their legislation, controls and residue surveillance measures provide equivalent guarantees for EU consumers.

In our submission, it is not sufficient for an Athlete to suggest that the source of a Prohibited Substance must be a contaminated supplement or food because he or she would never take a banned substance. There are a variety of cases which support this view".

31. In support of this latter point, Sport Ireland's Written Submissions cited the following cases: **RFU v Wells** (SRNADP/96/2018) at paragraphs 30 and 31, **UKAD v Buttifant** (SR/NADP/508/2016) at paragraph 3, **UKAD v Webster** (SR/NADP/894/2017) at paragraphs 9-11, 21 and 22, **Staples v RFU** (SR/NADP/1016/2017) at paragraphs 25-30 and paragraph 33, **WADA v IWF and Calcedo** (CAS 2016/A/4377) at paragraphs 2, 51-56 and 60, **WADA v IIFH** (CAS 2017/A/5282) paragraphs 74-76 **and UKAD v OHuaregbe** (SR300/2019) paragraphs 24 and 27-29.
32. In summary, Mr Healy submitted that the evidence would show Mr [IS-7145] has not been able to explain the source of boldenone in his Samples because oxandrolone and boldenone have totally different chemical structures and oxandrolone or its Metabolites or Markers cannot be converted to boldenone and/or its Metabolites. In his submission, the presence of oxandrolone in the 'Total War' unsealed tub cannot explain the presence of boldenone in Mr [IS-7145]'s A and B Samples.
Evidence of Dr Hans Geyer for Sport Ireland¹
33. Dr Hans Geyer, the Deputy Head of the laboratory in Cologne that analysed Mr [IS-7145]'s A and B urine Samples, as well as the unsealed and sealed tubs of Redcon 'Total War', was called to give evidence by Sport Ireland. Dr Geyer confirmed that he has been analysing urine samples in relation to anti-doping since 1983. Dr Geyer stated that the Cologne laboratory was the laboratory with the most experience with analysis of nutritional supplements for doping substances for anabolic steroids.
34. Dr Geyer gave evidence that his laboratory detected oxandrolone and oxandrolone matabolites in the unsealed tub of 'Total War' provided by Mr [IS-7145]. Dr Geyer said that in his experience of excretion studies of oxandrolone, based on the analysis of the 'Total War' supplement, the detected amounts of oxandrolone metabolites in Mr [IS-7145]'s urine Samples

¹ Transcript of Hearing on 3 September pages 27 to 35.

were consistent with the regimen Mr [IS-7145] set out in his submissions, which was that he used two scoops of the supplement, two to three times a week, with the last ingestion on the day before the sample was taken. Dr Geyer explained that oxandrolone is a WADA prohibited exogenous anabolic steroid; it is a synthetic substance that cannot occur naturally in human beings.

35. Dr Geyer gave evidence that his laboratory could not find boldenone in the unsealed tub of 'Total War' provided by Mr [IS-7145]. Dr Geyer said that oxandrolone and boldenone are completely different substances and one does not derive from the other as alleged by Mr [IS-7145] in his submissions: "*Boldenone is a totally different substance. Oxandrolone is a so called 17 methyl steroid. Boldenone has no 17 methyl group. .. boldenone is mainly injected whereas oxandrolone is administered orally and these are totally different substances*". Dr Geyer explained that boldenone is a WADA prohibited endogenous anabolic steroid; it is both available as a synthetic substance and can occur naturally in human beings but in extremely low amounts².
36. In response to the proposition that boldenone can be found in food, in particular meat from cattle, Dr Geyer explained that while boldenone can be present in cattle, as a growth promotor or occurring naturally, the Cologne laboratory's testing method can differentiate between exogenous boldenone, which is artificial and endogenous boldenone which is natural, as the latter "*would have a natural boldenone IRMS signature*". In the present case, Dr Geyer stated that "*we have a clear indication that the boldenone has an artificial source, so it is a synthesised product*"³. Dr Geyer went on to point out that "*IRMS is a technique which can differentiate between endogenous and exogenous artificial substances based on the carbon isotope ratio and the carbon isotope ratio of the boldenone detected in this urine sample was a clear artificial ratio. So it was a clear exogenous source for these boldenone metabolites*"⁴.
37. Dr Geyer gave evidence about the high concentration of boldenone detected in Mr [IS-7145]'s urine Samples:

"We have detected in this urine a high concentration of boldenone, about 40 nanograms per millilitre, and to achieve such a concentration you have to eat huge amounts of meat. Normally meat contains, after treatment of cattle with growth promotor, contains some microgram boldenone but here to achieve such a concentration it would be necessary to consume a thousandfold higher amount of, or more than a thousandfold more higher amount of boldenone to achieve such a concentration. So either you eat 10 kilos of meat or you have, you eat directly the injection site but this is, normally boldenone is very fast metabolised and

² Transcript, page 29 Question and Answer 10.

³ Transcript, page 30 Question and Answer 12.

⁴ Transcript, page 30 Question and Answer 13.

so we have never had such a case with a concentration in the milligram range. Milligram boldenone is necessary, in the milligram range of boldenone is necessary to achieve such a high concentration in the urine as 40 nanograms per millilitre”⁵

38. When cross-examined by Mr [IS-7145] Dr Geyer said the Cologne laboratory has never found boldenone in a supplement:

“We have only found the other substance androstenedione. It is an aromatase inhibitor which can be converted to boldenone. But in such a case if somebody uses a nutritional supplement with this androstenedione, then we also find metabolites of androstenedione and boldenone metabolites and in these cases we have investigated there was no metabolite of this androstenedione, of this aromatase inhibitor which could be available in a nutritional supplement”. Dr Geyer explained that, “As far as [he] knows there has never been found a nutritional supplement with boldenone acetate with orally available boldenone”⁶.

39. When questioned by the Panel, Dr Geyer confirmed that Mr [IS-7145]’s urine Samples contained exogenous and synthetic boldenone, not consistent with an endogeneous or natural source.

Evidence and Submissions of Mr [IS-7145]⁷

40. Addressing Mr Healy’s submission that Mr [IS-7145] did not disclose that he was taking supplements in his Doping Control Form, Mr [IS-7145] stated that he could not recall being asked if he was taking any supplements. Mr [IS-7145] said he did not know of anyone that would ride a bike “that wouldn’t be taking some sort of supplements in their bottle” whereas he could recall being asked if he was taking any medications, which Mr [IS-7145] said he was not. Mr [IS-7145] suggested that there was “some sort of mix up”⁸.
41. Mr [IS-7145] explained, in terms of the selection of the certain “obvious” supplements he submitted for testing, that these supplements were selected on the advice of [...] [REDACTED], who had asked Mr [IS-7145] what supplements he had been taking and suggested that the American supplements might be the source of the contamination. Mr [IS-7145] also stated that that the three supplements he sent for testing were selected as a consequence of recommendations made to him by [REDACTED]

⁵ Transcript, page 31 Question and Answer 14.

⁶ Transcript, page 32 Question and Answer 15.

⁷ Transcript, pages 36 to 52.

⁸ Transcript, page 36 line 26 onwards.

⁹ Transcript, page 37 line 13 onwards.

42. Mr [IS 7145] explained that ██████████ said that it was more than likely that the four substances were *"probably all in the one thing"*. Mr [IS 7145] said that ██████████ was of the same opinion. As such, when the Redcon 'Total War' product tested positive for the presence of oxandrolone, he thought *"that's it"*¹⁰. In terms of the absence of boldenone in the 'Total War' product, Mr [IS 7145] thought it may have been present in food. Mr [IS 7145] stated that there was *"no way I [he] injected anything. So that's when I [he] can't really produce where boldenone came into my system"*¹¹.
43. When cross-examined by Mr Healy, Mr [IS 7145] explained that he asked his brother for receipts for the products ordered from the United States but that his brother said it was nearly two years ago and that he *"wouldn't have receipts"* and emails *"would be well deleted"*. Mr [IS 7145] confirmed that he did not make any enquiry (on the internet or otherwise) as to the content of the supplements provided by his brother¹².
44. Mr [IS 7145] was also questioned by Mr Healy in respect of his indication in an email to the Registrar 30 March 2020 that he was *"expecting results by the end of March"*, yet the report ultimately produced by ██████████ stated that it received the supplements for testing on 21 April 2020. Mr [IS 7145] explained the challenges that he was experiencing with the process at the time, stating that he *"hardly slept"*, that he would *"shut [himself] off from it"*, that he was *"probably stalling it a bit"* and that he was experiencing difficulties in his personal life. Mr [IS 7145] further noted the impact of the coronavirus pandemic as a further matter affecting him during what he said *"[had not] been a great year"* for him¹³.
45. Mr Healy questioned Mr [IS 7145] in relation to the indication in his Written Submissions that ██████████ had suggested that the four detected Prohibited Substances are likely to be one single drug, oxandrolone. Mr [IS-7145] explained that ██████████ said *"they're more than likely all in the one"*. Mr Healy then asked Mr [IS-7145] if [...] in fact suggested to him that the four substances might have all come from one supplement rather than that they are the same substance or that boldenone is a derivative substance. Mr [IS-7145] agreed and said the [...] *didn't say a derivative substance [...] He just told me that more than likely it's the one spot this has come from.*¹⁴

¹⁰ Transcript, page 38 line 11 onwards.

¹¹ Transcript, page 40 line 9 onwards.

¹² Transcript, page 41 Question and Answer 31.

¹³ Transcript, page 42 Question and Answer 33.

¹⁴ Transcript, page 43 Question and Answer 35 and 36.

46. The Panel then questioned Mr [IS-7145]¹⁵. Dr O'Neill asked Mr [IS-7145] if he had received any information or education from his cycling club, the Cycling Federation or Cycling Ireland in relation to issues with the use of supplements. Dr O'Neill noted in particular that, as had been stated during the Hearing, 10% - 25% of supplements can be contaminated. Mr [IS-7145] said this was never said to him by his cycling club or by someone contacting him from Cycling Ireland. Dr O'Neill asked Mr [IS-7145] if he sought out information on supplements because, as Dr O'Neill noted, historically there have been issues with the use of supplements in many sports, particularly cycling. Mr [IS-7145] stated that it was "*not something that [he] had looked into*" and that he "*had had been pretty naive toward that to [his] cost*". Mr [IS-7145] explained that he did not have any financial support in terms of participating in cycling, that he was a part-time cyclist and that he does not participate in other sports or leisure activities other than a little bit of mountain biking.
47. Mr Browne asked Mr [IS-7145] if he was taking supplements, other than the Redcon products he submitted for testing. Mr [IS-7145] said that he was taking magnesium and glutamine, creatine, amino drinks and "*different things over the summer*". Mr [IS-7145] said that at the time of the race in question, he did not experience any benefit from the supplements. Mr [IS-7145] confirmed that any supplements he was talking would have been, in his view, pretty standard. He said the Redcon products did not stand out to him because he received them at no expense from his brother. He explained that when he received supplements for free from his brother there would be "*a quarter of a tub left in it*" and he saw it as "*just another supplement*".
48. The Chairperson asked Mr [IS-7145] if he was aware that the anti-doping regime was one of "*strict liability*" and that as an athlete he liable for what he ingests. Mr [IS-7145] responded in the affirmative, but explained that he did not research or "*check through*" the supplements and did not read Sport Ireland's guidelines on supplements. Mr [IS-7145] confirmed that he did not check whether any of the ingredients in the products supplied by his brother were on the WADA Banned Substance List. Mr [IS-7145] stated that he had never injected himself with any substance and did not have the intention of cheating through the use of Prohibited Substances.
49. Mr [IS-7145] confirmed that he shared with [REDACTED] and [REDACTED] the results of the report received from Dr Geyer which tended to demonstrate that the supplement was not the source of the offending substance in his system. Mr [IS-7145] said that [REDACTED] was of the view that it could "*still have come from that actual substance*". Noting

¹⁵ Transcript, page 45 onwards.

that Sport Ireland and Dr Geyer informed him that boldenone was not a derivative of oxandrolone and that it was a veterinary drug that can be injected in cattle, Mr [IS-7145] said that there was "pretty much no way [he] can prove where he got that from".

Evidence of Mr Matthew McKerrow, CEO, Cycling Ireland

50. Mr Healy called upon Mr McKerrow to give evidence in relation to Cycling Ireland's general procedures in relation to anti-doping education in light of Mr [IS-7145]'s responses to Dr O'Neill's questions. Mr McKerrow confirmed that cyclists apply to Cycling Ireland annually for a licence and that as part of this process, cyclists sign up to Cycling Ireland's terms and conditions, which refer to the UCI (*Union Cycliste Internationale*, Sport Ireland's international federation) and Sport Ireland anti-doping rules. Mr McKerrow explained that as a matter of course Cycling Ireland sends out a "membership pack" containing a "wallet card" which contains information in relation to supplements.

51. The Chairperson asked Mr [IS-7145] if he had any questions for Mr McKerrow. Mr [IS-7145] said that he did not "doubt that" (i.e. that Cycling Ireland provided information as described by Mr McKerrow) but that it was not something he had read through before this process. Mr [IS-7145] did not raise any questions for Mr McKerrow.

Concluding remarks

52. The Chairperson explained to Mr [IS-7145] that the Panel would have a discussion and reflect on the submissions and transcript before making and then providing a written reasoned decision. The Chairperson asked Mr [IS-7145] if he had any questions in relation to the process. Mr [IS-7145] queried the way in which decisions of the Panel are made public. Ms Siobhan Leonard, Director of Anti-Doping & Ethics, Sport Ireland, explained that Sport Ireland would issue the decision to its website and to media outlets, and that the written reasoned decision would also be released. The Chairperson explained to Mr [IS-7145] that there is no discretion in terms publication of the decision. Mandatory public reporting is required pursuant to Article 15 of the Rules.

D. THE DECISION

(a) Commission of anti-doping violations

53. A 'Prohibited Substance' is "[a]ny substance, or class of substances, so described in the Prohibited List"; the Prohibited List being the list published as an International Standard by WADA identifying the Prohibited Substances. Article 2.1 of the Rules provides, *inter alia*, that "It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. An Athlete

is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his or her sample."

54. The effect of Article 2.1 of the Rules is to impose strict liability on Mr [IS-7145] in terms of the content of his urine Samples. Article 2.1 goes on to expressly state that it is not necessary that "intent, Fault, negligence or knowing use" be established, in order for a breach of Article 2.1 to be deemed to have occurred. "Fault" is defined in the appendix to the Rules as "[a]ny breach of duty or lack of care appropriate to any particular situation."
55. The Panel accepts the evidence adduced by Sport Ireland that Mr [IS-7145]'s urine Samples contained four Prohibited Substances or their Metabolites or Markers (which are epioxandrolone, oxandrolone, 18-noroxandrolone and boldenone and/or boldenone metabolite(s)) and accordingly that Mr [IS-7145] has committed four anti-doping violations under Article 2.1 of the Rules.
- (b) Period of Ineligibility*
56. Article 10.6.4.1 of the Rules provides that multiple anti-doping violations of Article 2.1 are considered together as one single first violation and the period of Ineligibility or ban to be imposed is based on the violation that carries the more severe sanction.
57. Article 10.1.1 of the Rules provides that the period of Ineligibility for a breach of Article 2.1 shall be four (4) years where the anti-doping violation does not involve a Specified Substance, (here it does not) unless the Athlete can establish that the anti-doping rule violation was not 'intentional'. Article 10.1.3 of the Rules provides that the term "intentional" is used "to identify those Athletes who cheat" and 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 10.1.2 of the Rules provides that "[w]here Articles 10.1.1.1 and 10.1.1.2 do not apply, the period of Ineligibility shall be two (2) years."
58. The Panel accepts the evidence of Dr Geyer adduced by Sport Ireland that the unsealed tub of 'Total War' was contaminated and contained oxandrolone or its Metabolite or Markers. That substance is not a listed ingredient on the tub. The Panel accepts Mr [IS-7145]'s evidence and submissions that his ingestion of the supplement from this tub was the source of that Prohibited Substance in his urine Samples. The Panel also accepts the evidence of Dr Geyer that the presence of oxandrolone in the unsealed tub does not explain the presence of boldenone and/or boldenone Metabolite(s) in Mr [IS-7145]'s urine Samples. In particular the

Panel accepts Dr Geyer's evidence that each substance has different chemical structures and oxandrolone or its Metabolites or Markers cannot be converted to boldenone and/or its Metabolites.

59. Therefore the Panel finds that Mr [IS-7145] has not explained how boldenone and or its Metabolite was found in his urine Samples, so he cannot avail of the Contaminated Product defence under Article 10.4.1.2 (set out in paragraph 25 above) in respect of this anti-doping violation. Accordingly the Panel has no discretion as to the applicable period of Ineligibility to apply; it is four (4) years under Article 10.1.1.

(c) Commencement date of the Period of Ineligibility

60. The Panel determines that Mr [IS-7145] did not make a timely admission of the anti-doping violation within the meaning of Article 10.7.2. Instead he denied the violation and sought to have his B Sample tested. At the Hearing he ultimately appeared to accept the evidence of Dr Geyer that his Samples contained prohibited substances. Accordingly the Panel determines that Mr [IS-7145] is not entitled to have his period of Ineligibility backdated to the date of his sample collection on 15 September 2019.
61. Pursuant to Article 10.7.3.1 of the Rules Mr [IS-7145] is entitled to receive credit for the period of Provisional Suspension, which was imposed as of 5 November 2019. Accordingly the Panel determines that Mr [IS-7145]'s four year period of Ineligibility is deemed to have commenced on 5 November 2019 and will expire at midnight on 4 November 2023.

(d) Summary of Sanction Imposed and Consequences

62. Pursuant to the powers granted to it under Article 8.2 of the Rules, the Panel imposes the following sanctions and consequences on Mr [IS-7145] in respect of his anti-doping rule violation under Article 2.1 of the Rules:
- (a) Pursuant to Article 9.1 Mr [IS-7145]'s individual result in the Competition in question is disqualified with all resulting consequences, including forfeiture of any medals, titles, points and prizes. Mr [IS-7145] has not competed since that date so no further disqualifications arise.
- (b) Pursuant to Article 10.1.1 Mr [IS-7145] is subject to a period of Ineligibility of four (4) years.

- (c) Pursuant to Article 10.7.3.1 Mr [IS 7145]'s four year period of Ineligibility is deemed to have commenced on 5 November 2019 and will expire at midnight on 4 November 2023.
- (d) Pursuant to Article 15 Sport Ireland shall Publicly Report the Panel's Decision.

E. CONCLUDING COMMENTS

- 63. This decision may be appealed in accordance with Article 13 of the Rules within twenty-one (21) days from the date of this decision by filing a notice of appeal with the Chair of the Irish Sport Anti-Doping Disciplinary Panel, care of Sport Ireland.
- 64. The Panel notes the imbalance that arises when an Athlete is not legally represented. It makes it a more difficult process for an Athlete and requires the Panel and Sport Ireland to take extra precautions to ensure the Athlete understands the process. If anything could be done to support Athletes in this context it should be considered by Sport Ireland and National Governing Bodies.
- 65. The Panel believes that Mr [IS-7145], for his own benefit, should engage with further anti-doping education, both to ensure he does not inadvertently commit a repeat violation and so that he could become an educator and ambassador for anti-doping in his own cycling club and more generally.
- 66. The Panel wishes to thank its Registrar, Mr Nugent, for his work and assistance in relation to these proceedings and the parties and participants in the Hearing for their assistance.

DATED the 3rd day of October 2020



Signed on behalf of the Panel by

HELEN KILROY

Chairperson of the Panel