AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the matter of the Arbitration between

THE UNITED STATES ANTI-DOPING AGENCY, Claimant And JAMES NELSON, Respondent.	)	AAA No. 01-20-0019-3646

FINAL AWARD

Pursuant to the American Arbitration Association's (AAA) Commercial Arbitration Rules as modified by the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes as contained in the Protocol for Olympic and Paralympic Movement Testing Effective as revised January 1, 2015, a remote evidentiary hearing was held in Fort Worth, Texas on June 10, 2021, before David M. Benck ("Arbitrator") with Claimant and Respondent.

I, THE UNDERSIGNED ARBITRATOR, having been designated by the above-named parties, and having been duly sworn, and having duly heard the proofs, arguments, submissions, evidence and allegations submitted by the parties, and after an electronic hearing on June 10, 2021, do hereby FIND and AWARD as follows:

THE PARTIES

1. Claimant, the United States Anti-Doping Agency ("USADA"), as the independent anti-doping agency for Olympic Sports in the United States, is responsible for conducting drug testing and for adjudication of any positive test results and other anti-doping violations pursuant to the USADA Protocol. USADA was represented at the hearing by Jeff T. Cook, Esq. and Ted Koehler, Esq.
2. Respondent has held coaching or Masters Athlete memberships with USA Weightlifting ("USAW") since 2011 and was a Masters Athlete member at the time USADA collected the applicable sample #1634374 ("Sample"). Respondent appeared pro se. At the Initial Management Conference, the Arbitrator encouraged Respondent to retain legal representation, if possible, and advised Respondent to familiarize himself with the AAA's Pro Se Arbitration Administration Information Sheet.

JURISDICTION

3. Jurisdiction is based on Respondent' consent to the USADA Protocol as a member of

USAW and pursuant to the doping control form that he signed before his test. There was no objection to arbitral jurisdiction in this case or to the undersigned Arbitrator.

FACTUAL BACKGROUND/ PROCEDURAL HISTORY

4. While the Arbitrator considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, only the submissions and evidence considered necessary to explain the Arbitrator's reasoning are referred to in this Award.
5. On July 27, 2020, less than two months before this Sample was collected, Respondent received anti-doping education and took the USADA Athlete Advantage Tutorial through the USAW platform. The tutorial and quiz covered the substances on the Prohibited List (including anabolic steroids), the sanctions for violating the anti-doping rules, and the dietary supplement education resources available to athletes.
6. USADA collected the Sample from Respondent in competition at the American Open Series 3 on September 20, 2020 and sent the Sample to the Sports Medicine Research & Testing Laboratory ("SMRTL"), which reported that the A Sample contained .0125 ng/ml (or 12.5 picograms per liter) of M3 metabolite, an admittedly very low amount.
7. USADA notified Respondent of the A sample result on October 23, 2020.
8. Respondent requested that SMRTL analyze his B sample. On November 23, 2020, USADA notified Respondent that the B sample analysis confirmed the finding of M3.
9. The Anti-Doping Review Board ("ADRB") met and unanimously recommended that the case proceed.
10. On December 15, 2020, USADA charged Respondent with anti-doping rule violations ("ADRVs") for the presence of M3 in his sample and for his use and/or attempted use of DHCMT, in violation of Articles 2.1 and 2.2 of the IWF Anti-Doping Policy and the World Anti-Doping Code (the "Code"), which have been incorporated in the USADA Protocol for Olympic and Paralympic Movement Testing (the "Protocol").
11. Respondent requested an arbitration hearing on December 27, 2020, and USADA initiated a case with the AAA the next day. (Dec. 28, 2020).
12. The parties subsequently exchanged discovery requests. In his response to USADA's discovery requests, Respondent stated that he believed his positive test was caused by his use of one or two supplements from Blackstone Labs called "Growth" that he consumed "in or around the 2013-2014 time frame."
13. Respondent admitted that he was aware of the violations but denied that he knowingly used M3 (DHCMT).
14. Respondent disagreed with the 4-year suspension and argued for a reduction in suspension.
15. Respondent further argued that it is "monetarily impossible" for a recreational lifter to attain the monetary means to cover the costs to retain a company to conduct testing on the supplement lot to establish the source.

ANALYSIS

16. Respondent concedes that he violated Articles 2.1 and 2.2 of the Code and testified that he "clearly understand the violations, rules and education that USADA presented and have no issues with what they have listed, and I do know that I am solely responsible for whatever it might have been that I consumed."
17. As such, the only issue in this case is the length of the sanction he should receive. On that matter, Respondent argues that his sanction should "be reduced to at least 2 years."
18. Respondent relies on Article 10.5.1.2, arguing that he consumed the supplement "Growth"

and that the supplement must have been contaminated and the source of the DHCMT, without any fault or negligence.

19. Respondent contends that one or more supplements which he took in 2013-2014, is the likely source of his positive test. For the reasons explained below, however, Respondent's contention is insufficient to prove lack of intent by a balance of probabilities.
20. Respondent points to a March 2019 indictment filed against a supplement manufacturer in the U.S. District Court for the Southern District of Florida that charged the manufacturer with distributing controlled substances and introducing unapproved new drugs into interstate commerce, in violation of federal law. But the indictment never mentions DHCMT and provides no basis on which to conclude that "Growth" was ever contaminated with DHCMT. Furthermore, the case is currently scheduled for October 12, 2021, and there has been no adjudication of guilt.
21. Dr. Matthew N. Fedoruk, the Chief Science Officer, Science & Research at USADA, submitted an expert opinion and testified that although some studies and anecdotal evidence have suggested that M3 can remain in the body for more than a year, there is no evidence that it can remain in the body for seven or eight years.
22. Respondent counter argued that USADA is "only speculating that [DHCMT] cannot be in the system that long and cannot show any hard data that would say otherwise."
23. Code articles 3.1 and 10.2.1.1 provide that the sanction for presence and/or use of a Non-Specified Substance is four years "*unless the Athlete* or other Person *can establish* that the anti-doping rule violation was not intentional." Thus, Respondent bears the burden of proof on this issue.
24. To conclude that the consumption of "Growth" seven to eight years prior was the source of Respondent's positive test is to engage in speculation that CAS and AAA panels have consistently declined to do.
25. While there was no affirmative evidence that Respondent intended to cheat, the Code makes it the athlete's burden to prove that he did not cheat, and that is done by demonstrating the source of the DHCMT by a preponderance of the evidence.
26. Pure speculation that a potentially contaminated supplement from seven to eight years ago may have been the source of the DHCMT, when there is no supporting evidence or analysis of the suspected supplement to indicate that it was the source, is insufficient to satisfy the burden of proof.
27. Similar facts were considered by the tribunal in USADA v. Blazejack, AAA 01-16-0005-1873, in which an athlete maintained that his positive test could have been caused by a contaminated supplement, but analysis of the suspect supplements found an absence of the prohibited substance. The Blazejack tribunal rejected his argument, stating that the athlete needed to provide "more than theories about contaminated … supplements. Mr. Blazejack needs to give the Panel some evidence which constitutes the probable source of the positive result."
28. As in Blazejack, Respondent simply has not established by a balance of probability that the ingestion of something containing DHCMT was unintentional, and the Code therefore requires a sanction of four years of ineligibility.
29. "The Athlete's contention that he must have ingested the DHCMT from contaminated supplements had no evidentiary basis at all by reference to (including test results of) the supplements he had allegedly taken or from any other persuasive source. If such an 'explanation' was dispositive, any athlete whose body contained a prohibited drug could assert that it had come from contaminated supplements of any sort. That would destroy the effectiveness of the WADC and of the anti-doping regulations based on it and amount to a

license to cheat and an abject surrender in the battle against doping." WADA v. CPA & Karim Gharbi §54 (CAS 2017/A/4962).

30. The Arbitrator is sympathetic to Respondent's arguments that as a recreational lifter he cannot afford the cost to conduct any scientific research to establish the source, or to retain an expert to testify as to the detection window for DHCMT. However, "the athlete's…financial means…do not demonstrate in any way that his violation was unintentional under the clear test…" See Gharbi §57.
31. The Code simply does not allow a sanction reduction in these circumstances, and the Arbitrator has no discretion to reduce the Code's four-year sanction in this case.

AWARD

32. The undersigned Arbitrator hereby finds and awards as follows:

A. Respondent has admitted that he committed an anti-doping rule violation under Articles 2.1 and 2.2 of the WADA Code,

B. Respondent has not sustained his burden of proof under Article 10.2.1 of the WADA Code that his anti-doping rule violation was not intentional;

C. The period of ineligibility is four years, with the start date of Respondent's period of Ineligibility being the date of his acceptance of a provisional suspension on October 23, 2020, and expiring October 22, 2024;

D. Respondent's competitive results from the date of his positive test, September 20, 2020, through the date of his acceptance of Provisional Suspension on October 23, 2020, if any, are to be disqualified, and any medals, points or prizes earned during that period shall be forfeited;

E. The parties shall bear their own attorneys' fees and costs associated with this arbitration;

F. The administrative fees of the American Arbitration Association, totaling $1,595.00 and the compensation and expenses of the Arbitrator totaling $11,159.61 shall be borne by USADA and the United States Olympic Committee; and

G. This Award shall be in full and final resolution of all claims and counterclaims submitted in this arbitration. All claims not expressly granted herein are hereby denied.

Ordered, Decided and Awarded this the 28th day of June 2021.

David M. Benck