

**AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel**

In the Matter of the Arbitration between

United States Anti-Doping Agency,

Claimant

and

Joshua O'Neil,

Respondent.

Re: AAA No. 77 190 00384 09

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR (the "Arbitrator"), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs, arguments, and allegations of the parties, and, after an evidentiary Hearing held on November 16, 2009 (the "Hearing") and declared closed on November 16, 2009, does hereby render this reasoned award pursuant to the undertaking to do so by December 16, 2009.

1. SUMMARY

1.1 This case involves the first anti-doping violation for Joshua O'Neil ("Respondent"). He is a 24 year-old world class Judo athlete who placed second at the 2008 Olympic trials and won the USA Judo Senior National Championships in the 66K division in 2009. He has been in the United States Anti-Doping Agency ("USADA") Registered Testing Pool for several years and has been randomly tested on a number of occasions. He has never before tested positive or been found to have committed a doping offense.

1.2 Respondent gave a urine sample on April 18, 2009, as part of the USADA In-Competition testing program at the U.S. Senior Judo National Championships. Respondent's sample tested positive for ritalinic acid (Ritalin), a metabolite of methylphenidate, which is prohibited in the Class of Stimulants on the 2009 World Anti-Doping Agency ("WADA") Prohibited List (and is a Specified Substance). By stipulation, Respondent accepted the laboratory findings and agreed that the Positive Test constituted a first doping offense. The period of Ineligibility is a maximum of two (2) years. Respondent stated that he took a Ritalin tablet two (2) days before the Championships to aid in studying for a firefighter's examination, and that he did not do so to enhance his athletic performance. He reserved the right in his stipulation, and thereafter argued, that the period of Ineligibility should be reduced under Article 10.4 (Elimination or Reduction of Ineligibility for Specified Substances under Specific Circumstances) of the World Anti-Doping Code ("WADC"), or under Article 10.5.2 (No Significant Fault or Negligence), that the concept of proportionality should apply, and that the period of Ineligibility should commence on the date of the sample collection (April 18, 2009) pursuant to Article 10.9.2.

1.3 The only disputed issues in this case are the period of Respondent's Ineligibility and the date upon which it begins. After full consideration of the briefs and the testimony in light of the required elements and the respective burdens of proof under Articles 10.4, 10.5.2 and 10.9.2 of the WADC (which has been adopted by the International Judo Federation (the "IJF")), the Arbitrator finds that the Respondent was significantly negligent in taking Ritalin approximately two (2) days prior to a major Championship and was unable to demonstrate to the comfortable satisfaction of the Arbitrator that such action was not intended to enhance his athletic performance. The Respondent was, however, forthright about having made a serious mistake and took full responsibility for his actions. Moreover, he made a timely admission before competing again after

being confronted with the anti-doping rule violation, and voluntarily accepted on June 10, 2009 a Provisional Suspension in writing from USADA. The Arbitrator recognizes the benefits of encouraging honest acceptance of responsibility on the part of athletes, and concomitantly, of reducing the time and expense associated with pursuing anti-doping rule violations. After due consideration, the Arbitrator hereby sets the period of Ineligibility at two (2) years, commencing on April 18, 2009.

2. PARTIES

2.1 Claimant, USADA, is the independent anti-doping agency for Olympic sports in the United States and is responsible for conducting drug testing and any adjudication of positive test results pursuant to the United States Anti-Doping Agency Protocol for Olympic and Paralympic Movement Testing, effective as revised January 1, 2009 (“USADA Protocol”).

2.2 At the Hearing, Claimant was represented by Stephen A. Starks, Esq., Legal Affairs Director of USADA, and Travis T. Tygart, Esq., CEO of USADA, 1330 Quail Lake Loop, Suite 260, Colorado Springs, CO 80906. Appearing as an expert on behalf of USADA was David O. Conant-Norville, M.D.

2.3 At the Hearing, Respondent, Joshua O’Neil, established he is an elite level judo athlete and member of USA Judo, the National Governing Body (“NGB”) for the sport of judo in the United States. He appeared to personally submit his evidence to the Arbitrator. Appearing as an expert on behalf of Mr. O’Neil was Richard Stripp, Ph.D.

2.4 At the Hearing, Respondent was represented by Michael Straubel, Esq., Director, Valparaiso University Sports Law Clinic, 510 Freeman Street, Heritage Hall, Valparaiso, IN

46383, and Lisa Ross and Milo Johnson, both third year law students at Valparaiso University and as Legal Interns permitted under Indiana law to provide supervised client representation.

2.5 The Arbitrator commends counsel for both parties for their excellent briefing and oral presentations, and the Arbitrator appreciates the forthright manner in which the Respondent appeared and provided his testimony. The Arbitrator also found the testimony of Dr. Stripp and Dr. Conant-Norville informative and credible, and thanks them for their participation in the Hearing.

3. **JURISDICTION**

3.1 The Arbitrator's jurisdiction over this doping dispute is pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §220501, *et seq.* (the "Act"), because this is a controversy involving Respondent's opportunity to participate in national and international competition representing the United States. The Act states:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete. . . , conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws. . .¹

3.2 Under its authority to recognize a NGB², the USOC established its National Anti-Doping Policies,³ the latest version of which is effective January 1, 2009 ("USOC Policies"), which, in part, provide:

. . . NGBs shall not have any anti-doping rule which is inconsistent with these policies or the USADA Protocol, and NGB compliance with these policies and the USADA Protocol shall be a condition of USOC funding and recognition.⁴

¹ 36 U.S.C. §220521.

² 36 U.S.C. §220505(c)(4).

³ The USOC has adopted the WADC.

3.3 Regarding athletes, the USOC Policies provide:

... By virtue of their membership in an NGB or participation in a competition organized or sanctioned by an NGB, Participants agree to be bound by the USOC National Anti-Doping Policies and the USADA Protocol.⁵

3.4 In compliance with the Act, Article 10(b) of the USADA Protocol provides that hearings regarding doping disputes “will take place in the United States before the American Arbitration Association (“AAA”) using the Supplementary Procedures.”⁶

4. PROCEDURAL MATTERS

4.1 The Arbitrator and the parties held a Preliminary Hearing by telephone conference call on October 6, 2009. At the Preliminary Hearing, the Arbitrator made certain rulings and resolved certain issues; in addition, the parties entered into various evidentiary and procedural stipulations. The Arbitrator issued an order on October 6, 2009 establishing the briefing schedule, the Hearing date and location, and addressing certain matters related to the Hearing.

4.2 The evidentiary Hearing was conducted on November 16, 2009 in Chicago, Illinois, at the offices of the American Arbitration Association, located at 225 N. Michigan Avenue, Suite 1840, Chicago, Illinois 60601.

4.3 The following individuals testified at the Hearing at the request of Respondent: Joshua O’Neil (Respondent, in person), Dr. Richard Stripp (by telephone). The following witnesses testified at the Hearing at the request of USADA: Dr. David O. Conant-Norville (by telephone).

⁴ *USOC Policies*, ¶13.

⁵ *Id.* at ¶12.

⁶ The supplementary procedures refer to the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, as approved by the USOC’s Athletes’ Advisory Council and NGB Council. 36 U.S.C. §220522.

4.4 All exhibits filed with the parties' pre-hearing briefs were admitted into evidence, along with additional exhibits presented at the Hearing. The parties made opening statements and closing arguments. The parties responded to the questions of the Arbitrator. The Arbitrator requested copies of documents and PowerPoint presentations given at the Hearing. The parties provided the requested documents to the Arbitrator and the Hearing was closed on November 16, 2009.

5. RULES APPLICABLE TO THIS DISPUTE

The rules related to the outstanding issues in this case are the mandatory provisions of the WADC and the International Judo Federation Regulations and Procedures Concerning Drug Tests, as amended on various dates the last of which was April 21, 2002 ("IJF Regulations"). In the Preamble to the IJF Regulations it states that "The IJF recognizes the Olympic Movement Anti-Doping Code." Moreover, the Preamble includes a Note that indicates that ". . . the IJF Rules shall be updated systematically in order to comply with the Olympic Movement Anti-Doping Code applicable to all components of the Olympic Movement." Finally, the Preamble contains a provision that "The IJF will recognize and uphold any sanction imposed upon a competitor by any National, Regional, Continental or International Sports Organization, the IOC or any Governments or Governments [sic] Agencies, provided that the IJF is satisfied that the testing was properly carried out and that the rules of the body conducting the test afford sufficient protection to the competitors." The "Olympic Movement Anti-Doping Code" referred to above is deemed to mean the WADC and given the absence of further specificity in the IJF Rules, the applicable provisions of the WADC (version 2009) shall be applied to this case. When reference is made herein to an "Article" (e.g., "Article 10.4" or "Article 10.5.2"), it shall mean an Article of the WADC.

5.1 Applicable provisions of the WADC (Version 2009):

Article 2.1: [Doping is the] presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample.

Article 2.1.1: It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her 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 violation under Article 2.1.

Article 3.1: Burdens and Standards of Proof.

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond all reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof.

Article 3.2: Methods of Establishing Facts and Presumptions.

Facts related to anti-doping violations may be established by any reliable means, including admissions.

Article 4.2.1: Prohibited Substances and Prohibited Methods.

The Prohibited List shall identify those Prohibited Substances and Prohibited Methods which are prohibited as doping at all times (both In-Competition and Out-of-Competition) because of their potential to enhance performance in future Competitions or their masking potential and those substances and methods which are prohibited In-Competition only.

Article 4.2.2: Specified Substances.

For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be "Specified Substances" except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.

Article 10.2: Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods.

The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Prohibited Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years Ineligibility.

Article 10.4: Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances.

Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance-enhancing substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

Article 10.5: Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances.

Article 10.5.2: No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

Article 10.9: Commencement of Ineligibility Period.

Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.

Article 10.9.2: Timely Admission

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Anti-Doping Organization, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.

Article 10.9.4: If an Athlete voluntarily accepts a Provisional Suspension in writing from an Anti-Doping Organization with results management authority and thereafter refrains from competing, the Athlete shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Athlete's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of a potential anti-doping rule violation under Article 14.1.

5.2 WADA – The 2009 Prohibited List (January 1, 2009)

S6. Stimulants

All stimulants . . . are prohibited, except imidazole derivatives for topical use and those stimulants in the 2009 Monitoring Program. Stimulants include: . . .

b. specified stimulants (examples): . . . methylphenidate

6. FACTS

6.1 Claimant, USADA, is the independent anti-doping agency for Olympic Movement

sports in the United States and is responsible for conducting drug testing and adjudication of potential doping offenses.

6.2 Respondent, Joshua O'Neil, is a 24 year old elite judo competitor from Racine, Wisconsin. He placed second in the 2008 Olympic Trials and won the USA Judo Senior National Championships in the 66K division in 2009. On April 18, 2009, after winning the National Championship, Mr. O'Neil was selected for a random drug test. On or about May 19, 2009, Mr. O'Neil received a letter from USADA informing him that his "A" sample had tested positive for methylphenidate at the WADA-accredited laboratory in Los Angeles, California.

6.3 Prior to the Hearing, the parties executed a Stipulation of Uncontested Facts and Issues (the "Stipulation"), a verbatim copy of which follows:

The United States Anti-Doping Agency ("USADA") and Mr. Josh O'Neil ("Mr. O'Neil") stipulate and agree, for purposes of all proceedings involving USADA urine specimen number 1520165, the following:

1. That the USADA Protocol for Olympic and Paralympic Movement Testing ("Protocol") governs the hearing for the doping offense involving USADA specimen number 1520165;
2. That the mandatory provisions of the World Anti-Doping Code ("WADA Code") including, but not limited to, the definitions of doping, burdens of proof, Classes of Prohibited Substances and Prohibited Methods, and sanctions, and contained in the USADA Protocol at Annex A, and the International Judo Federation ("IJF") Anti-Doping Rules are applicable to this hearing for the doping offense involving USADA specimen number 1520165;
3. That Mr. O'Neil gave the urine sample designated as USADA specimen number 1520165 on April 18, 2009, as part of the USADA In-Competition testing program at the USA Judo Senior National Championships;
4. That each aspect of the sample collection and processing for the A bottle of USADA specimen number 1520165 was conducted appropriately and without error;
5. That the chain of custody for USADA specimen number 1520165 from the time of collection and processing at the collection site to receipt of the sample by the World Anti-Doping Agency accredited laboratory at the University of California at Los Angeles ("UCLA Laboratory") was conducted appropriately and without error;

6. That the UCLA Laboratory's chain of custody for USADA specimen number 1520165 was conducted appropriately and without error;
7. That the UCLA Laboratory, through accepted scientific procedures and without error, determined the sample positive for the finding of the substance ritalinic acid, a metabolite of methylphenidate, which is prohibited in the Class of Stimulants on the 2009 WADA Prohibited List, in the A bottle of USADA specimen number 1520165 ("Positive Test");
8. That Mr. O'Neil signed an Acceptance of Laboratory Findings and Waiver of Right to B Sample Analysis form on June 10, 2009, waiving his right to the B sample analysis and accepting the Positive Test;
9. That Mr. O'Neil agrees that the Positive Test constitutes a first doping offense;
10. That the Parties agree that the period of Ineligibility will be a maximum of two (2) years;
11. That Mr. O'Neil reserves the right to argue that the suspension should begin on April 18, 2009, the date his sample was collected, pursuant to WADA Code Article 10.9.2, instead of on the date of the hearing Arbitrator's decision with credit being given for the time Mr. O'Neil has served a Provisional Suspension beginning on June 10, 2009, so long as Mr. O'Neil has not and does not compete during the period of any Provisional Suspension;
12. That Mr. O'Neil reserves the right to argue for a reduction in the two (2) year period of Ineligibility under Specified Substance analysis under the applicable rules.

6.4 Mr. O'Neil testified that he has been competing in Judo for more than twelve years, and at age 18 moved to Colorado Springs to train at the U.S. Olympic Training Center ("OTC"). While there he studied fire science at the University of Colorado at Colorado Springs.

6.5 In March 2009, Mr. O'Neil received a 10 mg Ritalin tablet from a friend, William Wright, for the stated purpose of improving his focus as he prepared for a Kenosha, Wisconsin firefighter's exam scheduled for June 2009. He testified that Mr. Wright referred to the tablet as "Adderall," that he saw the prescription bottle but did not read the label, and that as a consequence

did not know that it was in fact Ritalin, a brand name for methylphenidate, a specified substance under the WADC.

6.6 Mr. O'Neil testified further that he knew that Adderall and Ritalin are prescription drugs, that he had no prescription for these drugs, and that Mr. Wright's action in providing the Ritalin tablet was illegal. Mr. O'Neil didn't offer Mr. Wright as a witness because he didn't want to cause him any trouble. Mr. O'Neil has instead taken responsibility for his actions.

6.7 On April 16, 2009, Mr. O'Neil traveled to San Diego, California for the 2009 USA Judo Senior National Championships. He testified that he took a 10 mg tablet of Ritalin that evening to improve his focus as he studied for a Kenosha, Wisconsin firefighter's exam scheduled for June 2009. He testified that he never stopped to consider the nature of the substance that he ingested, nor did he consult the USADA Drug Reference Online ("DRO") service.

6.8 On April 17, 2009, Mr. O'Neil prepared for the upcoming National Championships, a significant element of which was to get down to his required competitive weight. He testified that pre-competition weight loss was a customary and familiar procedure, noting that he had the ability to lose 9 lbs in two days by using techniques such as donning plastic suits, avoiding liquids and food, and sitting in a sauna. Mr. O'Neil made his competitive weight, and went on to win the 66K class on April 18, 2009.

6.9 Mr. O'Neil indicated that he was familiar with USADA and its requirements. He first entered the USADA testing pool on August 1, 2004, had received USADA publications (e.g., USADA Protocol, USOC Anti-Doping Policies, Prohibited List, TUE and Whereabouts Policies, Wallet Card), and had been previously tested many times (by his estimate 7-10 times). He testified that, while a resident at the OTC, he attended two or three USADA anti-doping briefings. On October 27, 2008, for example, an email was sent to his acknowledged email address announcing a

webinar during which WADC and IST Changes (effective January 1, 2009) of importance to elite athletes would be discussed. During his testimony, he demonstrated a clear understanding of the purpose of anti-doping rules (in his words "...to keep sport clean"). He is aware of the USADA out of competition testing procedures, having submitted, according to USADA records, some 18 athlete location forms. Mr. O'Neil testified that he was familiar with USADA's DRO service and that he had made searches through DRO. He appears to be computer-literate; in fact, he currently resides in Chicago where he works for a web-marketing company.

6.10 Richard Stripp, Ph.D., qualified as an expert witness on behalf of Mr. O'Neil. Dr. Stripp received his Ph.D. in Pharmacology and Toxicology from St. John's University and currently sits on the faculty of The City University of New York (John Jay College of Criminal Justice). David O. Conant-Norville, M.D., qualified as an expert witness on behalf of USADA. Dr. Conant-Norville received his M.D. degree from Oregon Health Sciences University and is currently licensed to practice medicine in Oregon where he serves as President of Mind Matters, P.C. and has a child, adolescent and general psychiatry practice.

There was general agreement between Drs. Stripp and Conant-Norville that the dosage taken by Mr. O'Neil (10 mg of Ritalin) was small and that the time of ingestion (24-48 hours prior to the drug test) could only be approximated from the available laboratory data. Mr. O'Neil waived the testing of his "B" sample, thereby reducing the availability of measurement information.

6.11 While Drs. Stripp and Conant-Norville held differing views on the effect of Mr. O'Neil's Ritalin dose on performance, both agreed that Ritalin was commonly prescribed to treat Attention Deficit Hyperactivity Disorder (ADHD) because it tends to enhance focus through production of dopamine in the brain, resulting in a calming effect and greater attention. Both also

agreed that, subject to individual variability, stimulants of the Ritalin type can affect sleep, suppress appetite, and promote weight loss.

6.12 Mr. O'Neil did not compete between April 18, 2009, the date his sample was taken, and June 10, 2009, the date on which he accepted a Provisional Suspension.

7. PARTIES' ARGUMENTS

Respondent's Arguments

7.1 Throughout his pre-hearing brief, oral argument, evidence and testimony, Respondent argued that, overwhelmed by the pressure to succeed on a firefighter's exam, he made the poor decision to ingest what he believed was Adderall as a means of dealing with stress and improving his concentration—a mistake that has negatively impacted his judo career and may jeopardize his future as an Olympic contender.

7.2 In March 2009, Respondent argued that he received a 10 mg Ritalin tablet from an acquaintance who had a prescription for the drug. Mr. O'Neil saw the prescription bottle, but he did not read the label and, consequently, did not know that it was in fact Ritalin, which is the brand name for methylphenidate, a specified substance under the WADC. He planned to take the tablet at that time to improve his focus for an upcoming EMT exam, but when he opted not to take the exam he decided to hold onto the tablet for a future study situation.

7.3 Respondent argued that, on April 16, 2009, he began studying for the Kenosha Firefighter's Entrance Exam and ingested the 10 mg Ritalin tablet with the hope that it would take his mind off the upcoming competition and help him concentrate on the exam study materials. Respondent never stopped to consider the tablet's implications on his upcoming judo competition,

and, consequently, never consulted the WADC substance lists to see if Adderall (or Ritalin) was contained therein.

7.4 Respondent called as a witness Dr. Richard Stripp, Ph.D., ACFE, who conducted a forensic toxicology case review of Respondent's laboratory documents. Respondent argued that he had received information from USADA indicating that a full set of laboratory documents could not be provided, because a "B" sample analysis was waived by him. A precise measurement of the ritalinic acid found in Respondent's sample therefore could not be ascertained. Respondent argued further that the existing laboratory documents provided an estimate of the level of ritalinic acid, and that it was a low level (approximately 300 nanograms per milliliter). Dr. Stripp testified that the laboratory documentation could provide an approximate time of when the pill was taken (i.e., approximately two (2) days before the test), and that the low concentration would reasonably lead to a conclusion that 80% of the Ritalin was out of Respondent's system within 24 hours, with the balance, in 72-96 hours. In Dr. Stripp's opinion, the indicated concentration wouldn't help performance.

7.5 Respondent argued that the WADC provides that "all Prohibited Substances shall be 'Specified Substances' except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the 'Prohibited List.'" *See* Article 4.2.2. Stimulants, such as Ritalin, are banned only in-competition and are subdivided into specified and non-specified use categories. This division acknowledges that there are some substances that serve legitimate purposes other than to enhance athletic performance.

7.6 Respondent argued additionally that he did not have significant fault or negligence under the totality of the circumstances. To make such assertion, the Respondent must establish how the prohibited substance entered his system, and he must show why his fault or negligence

was not significant through a discussion of the facts surrounding the incident. Respondent stated that the methylphenidate was found in his system because of the tablet he ingested two days before the competition while studying for an upcoming exam. Dr. Stripp's testimony was offered in support of Mr. O'Neil's testimony that the tablet was taken two days before the competition. Based on this testimony, Respondent asserts that the threshold issue of how the prohibited substance entered his system is satisfied, and that a look at the totality of his circumstances (his naiveté about specified substances, his lack of intent, his cooperativeness, and the future consequences of the sanction) warrants a reduced suspension.

7.7 The Respondent correctly noted that athletes are responsible for what they ingest under the principle of strict liability. *See* Article 2. He argued however that, when an athlete can establish ignorance of anti-doping controls, it is possible that a reduced period of suspension is warranted, citing *USADA v. Brunemann* (AAA No. 77 190 E 00447 08 JENF).

In 2007, an arbitration panel determined that an athlete with substantial experience in competition was negligent in taking a performance enhancing supplement. *USADA v. Piasecki* (AAA No. 30 190 00358 07). In *Piasecki*, an elite wrestler who lived and trained at the OTC and was a member of the 2006 national team received a two-year suspension from competition after testing positive for a prohibited substance. *Id.* at ¶ 2. The athlete took a supplement marketed to improve recovery and increase testosterone, which was purchased at a well-known health store chain. *Id.* at ¶ 6. Although the athlete consulted with store staff and briefly consulted the product's website, he did not perform sufficient diligence in investigating the product for a possible prohibited substance ingredient. *Id.* at ¶ 28. The panel determined that he understood what he consumed was at his own risk and that more care was reasonably required for a supplement marketed for performance under these circumstances; therefore, the athlete had the intent to

improve his performance with the supplement. *Id.* at ¶ 29. In conclusion, the panel stated: "It is well known in the sporting community that supplements are unregulated and that numerous athletes have been declared ineligible after mistakenly taking such supplements. Mr. Piasecki's ignorance of this situation is difficult to believe." *Id.*

7.8 Respondent argued that he was ignorant about the specified substances and that his negligence was not substantial. Respondent argued that he was not actively seeking out an unregulated supplement designed to enhance his performance by boosting his testosterone levels and minimizing his recovery time. Instead, he was looking for a way to aid his poor concentration while studying and to help him take his mind's focus off of his upcoming judo competition. Mr. O'Neil never read the prescription label and never knew that Ritalin contained methylphenidate. Although Mr. O'Neil did receive some education about anti-doping, he argued that he did not understand that Ritalin is impermissible in-competition; sitting through a quick educational seminar and comprehending the information conveyed are not one in the same. In Mr. O'Neil's mind, Ritalin was simply a substance that could aid his concentration in an academic setting, and performance-enhancing drugs, such as steroids, were the prohibited ones for athletes. Additionally, while it might be reasonable to assume that Mr. O'Neil considered Adderall to be a stimulant, he took it outside of competition, well before the competition was scheduled to begin and with enough time for its effects to pass. Consequently, he never consulted the USADA website or the athlete hotline. Had he consulted the WADC specified substance list to see if Adderall or Ritalin was contained therein, he would have been unsuccessful. The list refers only to methylphenidate, which under these circumstances, Mr. O'Neil could not possibly have known was in Adderall (and Ritalin) without having a chemistry or pharmaceutical background. Mr. O'Neil does not argue that his decision was wise nor that he is without fault, but only that his level

of fault is more in line with *Brunemann* and not significant enough to warrant a two year suspension. Respondent maintains that his lack of intent is relevant to the issue of exceptional circumstances.

7.9 Respondent admitted his violation and did not challenge the lab results. Respondent acknowledged that his ingestion of methylphenidate is the type of athlete behavior USADA and the USOC seek to prevent, and he understands that he should be punished for his actions.

7.10 Respondent argued that a reduced period of Ineligibility is appropriate for his anti-doping violation because of exceptional circumstances. Additionally, Mr. O'Neil argued that a one-year suspension is proportional to the nature of his violation and the harm a two-year suspension will cause for his future as a judo competitor. Furthermore, Mr. O'Neil argued that his suspension should apply retroactively beginning April 18, 2009, the date of the competition in which Mr. O'Neil tested positive for a banned substance.

7.11 Respondent argued that a reduced period of Ineligibility for him is appropriate because the effect of a two-year suspension is disproportional to the offense. Respondent argued that the "level" playing field is a balance between the protection of an individual athlete's basic human right to compete and the rights of those benefiting from a drug-free environment. *USADA v. Vencill* (AAA 30 109 0029203), n. 25. He asserts that the test for proportionality includes (1) the mental state of the offender, (2) actual or potential injury caused by the misconduct; and (3) aggravating and mitigating circumstances. Respondent is a serious contender for the 2012 U.S. Olympic Judo Team. If Respondent is not allowed to return to competition prior to the 2010 USA Judo Senior National competition, his ability to accumulate points for Olympic team selection will

be gravely harmed, thereby allowing the consequences of his sanction for a 2009 offense to last well into 2012.

7.12 Respondent argued that reduction of his suspension because of his circumstances is consistent with the underlying policy of the WADC. Mr. O’Neil cites *USADA v. Brunemann*, in which a swimmer having little experience with the doping control process happened to make a bad decision by taking some of her mother’s prescription laxatives, which contained triamterene and hydrochlorothiazide (TH). *Id.* The swimmer’s argument was that she made a mistake and that the levels of banned substances were so low that the substances’ presence could not be associated with the intent to enhance sports performance. *Id.* The swimmer further emphasized that the pending suspension would prevent her from participating in important competitions, including Olympic opportunities. *Id.* at ¶7.3. The swimmer reasoned that an elongated suspension, under the circumstances, would “violate the fundamental principle of proportionality.” *Id.* The *Brunemann* panel reasoned that the swimmer understood she was responsible for what entered her body. However, the panel found that she did not intend to cheat or enhance her sports performance. *Id.* at ¶9.8. Furthermore, the panel noted that the swimmer was remorseful and accepted full responsibility for her mistake. *Id.* at ¶9.10. Thus, the panel held that she should receive a six-month suspension.

7.13 Respondent argued that because he admitted his doping violation and has not competed since, and has fully co-operated with USADA, his suspension period should commence on April 18, 2009, under the provisions of Article 10.9.2.

USADA’s Arguments

7.14 USADA argued that Mr. O’Neil knowingly and intentionally ingested the controlled and prohibited drug, Ritalin, without a medical prescription. Mr. O’Neil has been in

and out of the USADA Registered Testing Pool since 2004 and is experienced with anti-doping rules. He now contends that his use of the prohibited drug immediately before one of the most important competitions of his life was coincidental and unrelated to the competition.

Respondent does not contest the sample collection or the laboratory results in his case, or that his positive test constitutes a first doping offense. *See* Stipulation ¶9. The standard penalty under the applicable rules for a positive test is two years. Respondent has the burden to prove he is entitled under the rules to a reduction in the standard period of Ineligibility, and by stipulation Respondent has agreed. *See* Stipulation ¶¶9, 10, and 12. USADA does not believe he can meet his burden and therefore he cannot receive a reduction given his decision to intentionally and knowingly ingest, without medical authorization, a controlled and prohibited drug.

7.15 Where the presence of a Prohibited Substance or its Markers or Metabolites in an athlete's sample has been established, Article 10.5.2 shifts the burden to the athlete to establish: (1) how the substance entered his body, and (2) that he bears No Significant Fault or Negligence. If he can prove both elements, the athlete is eligible for up to a one year reduction in the presumptive two year period of Ineligibility.

7.16 Likewise, Article 10.4 of the WADC, through which athletes can receive a reduced sanction for use of Specified Substances under Specific Circumstances, shifts the burden to the athlete to prove (1) how the substance entered his body, and (2) with corroborating evidence in addition to the athlete's word and to the comfortable satisfaction of the hearing panel, that he did not intend to enhance his sport performance or mask the use of a performance enhancing substance. Only after the athlete has established these two elements will the hearing panel consider the athlete's degree of fault as the sole criterion for assessing the athlete's period of Ineligibility on a substituted scale from a reprimand and no period of Ineligibility to a maximum of

two years. *See* Article 10.4 (compare Article 10.5.2 which only allows a reduction of up to one-half the otherwise applicable period of Ineligibility).

7.17 Regardless of the analysis applied, the WADC is clear that, “It is each Athlete’s personal duty to ensure that no Prohibited Substances enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their samples.” *See* Article 2.1. Once USADA established a doping offense, as is undisputed in this case, there is a “presumption of guilt” against the athlete and it is up to him to “rebut the presumption of guilt” and demonstrate why the standard sanction should not be imposed. *See IRB and Keyter*, (CAS 2006/A/1067), at ¶¶6.2 and 6.3.

7.18 Exceptional circumstances “are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.” *See* Comment to Articles 10.5.1 and 10.5.2. An athlete demonstrating that he bears No Significant Fault or Negligence in connection with an anti-doping rule violation is a very “unique circumstance.” *Id.* The same is true for a reduction under Article 10.4 Athletes who test positive for Specified Substances have the same high burden of proof as those who test positive for non-Specified Substances because “Specified Substances are not necessarily less serious agents for the purposes of sports doping than other Prohibited Substances.” *See* Comment to Article 10.4

7.19 USADA argued that neither Article 10.5.2 advanced by Respondent nor Article 10.4, which applies to Specified Substances under Specific Circumstances, is applicable to cases of intentional use of prohibited drugs. Therefore, in order to receive a reduction in the standard period of Ineligibility under either article Respondent must prove:

- (1) how the substance entered his system;
- (2) that he did not intend to enhance his performance; and

(3) that his degree of fault was not significant. [*The Arbitrator notes that the word “significant” does not appear in the text of Article 10.4.*]

If Respondent fails to demonstrate that he did not take the stimulant he admittedly ingested to enhance his performance, he is not eligible for a reduction in the standard two year period of Ineligibility. Additionally, the WADC drafters made clear that “generally, the greater the potential for performance-enhancing benefit, the higher the burden on the Athlete to prove lack of intent to enhance sport performance.” *See Comment to Article 10.1*

Recently, the Court of Arbitration for Sport (“CAS”) addressed the performance enhancement question in a Specified Substances case. *See WADA v. NSAM & Cheah & Ng & Masitah*, (CAS 2007/A/1395) (hereinafter “*Cheah*”). *Cheah* involved shooters who tested positive for Propranolol, a beta-blocker, which they claim they ingested through chocolates given to them by their coach. *Id.* at ¶77. In appealing the one-year period of Ineligibility issued by the National Shooting Association of Malaysia (“NSAM”), WADA argued that there was not sufficient evidence to establish that the shooters did not intend to enhance their performance for the following three reasons:

- (1) Propranolol enhances performance in shooting and “the nature of the substance may play a role in establishing the intention of the athlete to enhance his or her sport performance. An athlete is obviously more likely to intend to enhance his/her sport performance by taking a substance capable of doing so than one not capable of doing so.”;
- (2) The Athletes could not in good faith have not suspected that they were ingesting a prohibited substance; and
- (3) The Athletes’ ingestion of unwrapped chocolates is so negligent as to constitute an assumption of risk of ingesting a substance, thereby making the ingestion of Propranolol intended rather than unintended.

Id. at ¶75. In noting “the performance enhancing effects of Propranolol in shooting cannot be ignored,” the CAS panel concluded that the athletes did not establish that they did not intend to

enhance performance and were not entitled to either a Specified Substances (Article 10.4) or No Significant Fault or Negligence (Article 10.5.2) reduction, and thus they received the standard two year period of Ineligibility. *Id.* at ¶¶77 and 90. In this case, Respondent faces the same problem as the athletes in *Cheah*. The benefits of stimulants are commonly known. In fact, the WADA Prohibited List has prohibited the use of all stimulants in-competition. *See* WADA Prohibited List, S6. Stimulants.

7.20 In USADA's view, it is difficult to imagine a set of facts where an athlete's fault could be any higher. Respondent was surely aware of the health risks of intentionally ingesting a prescription medication without medical authorization, which incidentally is also a violation of U.S. and Wisconsin law. *See* 21 USCS § 844; Wisc. State Ann. §961.

Respondent cited the lower panel case of *Kicker Vencill* for the proposition that a two year period of Ineligibility is disproportionate in Respondent's case. *See Vencill and USADA*, (CAS 2003/A/484). In *Vencill*, the Panel accepted that the athlete's positive test for the steroid 19-norandrosterone was the result of his contaminated nutritional supplements and that the contamination was unknown to the athlete, but still found the athlete to bear significant fault. (CAS 2003/A/484), at ¶¶55 and 56. Therefore, the athlete received the maximum two year period of Ineligibility. *Id.* at ¶69. In reaching that conclusion, the panel highlighted the athlete's experience, education on the risks of supplemental contamination (even though he was unaware that his particular supplements were contaminated), and his failure to discuss taking supplements with his parents, coach, or doctor, or to research the supplements on his own. *Id.* at ¶¶58 to 61.

7.21 Also important in addressing Respondent's particular level of fault is the fact that unlike *Vencill* and two cases cited by Respondent, *Brunemann*⁷ and *Piasecki*, all three of which were cases that involved positive samples out of competition, Respondent's sample was collected

⁷ USADA asserted that this case is much different from Respondent's case in many other significant respects.

in competition. See *Vencill and USADA* (CAS 2003/A/484), at ¶4; *USADA v. Brunemann* (AAA 77 190 00447 08), at ¶5.3; *USADA v. Piasecki* (AAA 30 190 00358 07), at ¶2. This is significant because, unlike the athletes in those cases, after ingesting a Prohibited Substance, Respondent simply could have decided not to compete and avoid his positive test. Therefore, in that regard Respondent's level of fault is higher than Vencill, Brunemann and Piasecki. It is difficult to see how Respondent should receive more favorable treatment than athletes who did not knowingly ingest substances and did not have the option of not competing, as did Respondent. Therefore Respondent should not receive a reduction in the two year period of Ineligibility.

7.22 Finally, USADA made reference to a recent International Tennis Federation ("ITF") decision with respect to Courtney Nagle, a U.S. tennis player, who tested positive in-competition for the diuretic, Canrenone, which is a Specified Substance on the 2009 WADA Prohibited List. See ITF's letter *In re matter of Nagle* dated March 29, 2009, at ¶2.2. After testing positive, Ms. Nagle supplied the ITF with medical records confirming the diagnosis of a medical condition and the prescription of a substance containing Canrenone used to treat the condition. *Id.* at ¶2.3. ITF accepted the corroborating evidence of how the substance got into her system and that she did not intend to enhance her performance and therefore considered a reduction under Article 10.4 *Id.* at ¶2.4.

In assessing her degree of fault, ITF observed that Ms. Nagle:

failed to take various steps that were available to her to discharge her strict personal responsibility to ensure that the medical treatment she received did not involve substances that are prohibited under the Programme. She did not use the ITF wallet card, she did not call the ITF telephone advice line, and she did not contact her National Association or USADA. Pleading ignorance about these matters, and about the resources available to help her, is insufficient.

Id. at ¶3.1.1.3. However, in reducing Ms. Nagle’s period of Ineligibility to 16 months, ITF placed heavy emphasis on the fact that she had a legitimate medical condition and a prescription, and stated the following, which is particularly relevant to Respondent’s case:

Ms. Nagle did get the Canrenone from a doctor, who prescribed it in good faith to treat a legitimate medical condition. This can be contrasted with cases where athletes take pills, supplements and other ‘medications’ without prescription or other proper medical advice. Ms. Nagle was not completely reckless, as are other athletes in the latter cases.

Id. at ¶3.1.2.

8. LEGAL ANALYSIS AND DISCUSSION

8.1 Mr. O’Neil stipulated that a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers) had occurred. The substance for which the Respondent tested positive – namely, ritalinic acid, a metabolite of methylphenidate – is prohibited in the Class of Stimulants on the 2009 WADA Prohibited List and is classified as a Specified Substance. Mr. O’Neil admitted the offense in a timely manner, has not competed since, and submitted to a Provisional Suspension in writing on June 10, 2009.

8.2 The issues before the Arbitrator are therefore (a) whether a reduction of sanction is available to the Respondent under Article 10.4 (Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances), or under Article 10.5.2 (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances - No Significant Fault or Negligence), (b) whether the notion of proportionality applies to Respondent in respect of a reduction, and (c) whether the commencement of the period of Ineligibility may start as early as the date of sample collection under Article 10.9.2, or shall start on the date of this

Award with credit being given for the time the Respondent has served a Provisional Suspension. The maximum period of Ineligibility is two (2) years.

8.3 Mr. O’Neil argued that Article 10.4, or in the alternative, Article 10.5.2 applies to him; in so doing, the burden of proof shifts to him. Article 3.1 states: “Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof.”

8.4 Under Article 10.4, Mr. O’Neil must establish how the specified substance entered his body by a balance of probability, and through corroborating evidence in addition to his word establish to the comfortable satisfaction of the Arbitrator that there was an absence of intent to enhance sport performance. His degree of fault must be taken into account. In the Comment to Article 10.4, it states: “In assessing the Athlete’s degree of fault, the circumstances considered must be specific and relevant to explain the Athlete’s departure from the expected standard of behavior.”

8.5 At the Hearing, Mr. O’Neil testified that he took one tablet of Ritalin on April 16, 2009 – two (2) days before the USA Judo Senior National Championships where he was a leading contender – for the purpose of helping him focus on an upcoming Kenosha, Wisconsin firefighter’s exam. To buttress this assertion, Dr. Richard Stripp testified on Mr. O’Neil’s behalf that he had examined the laboratory results for the “A” sample, and he was therefore of the opinion that the Ritalin was ingested by Mr. O’Neil approximately two (2) days before the Championships. It was also his opinion that the low concentration (300 nanograms per milliliter) would not help performance. USADA’s expert witness, Dr. David O. Conant-Norville, stated that the dosage was

irrelevant (“...a 10 mg Ritalin tablet is a starting dose for adults” and that “...the blood-brain interface is what counts”). Dr. Conant-Norville also testified that athletes in other sports (e.g., gymnastics, figure skating, and wrestling) have used Ritalin as an appetite suppressant.

8.6 Mr. O’Neil testified that the day following the ingestion of the Ritalin tablet he prepared for the competition by, among other things, getting his weight down to the required level for the 66K division. According to Mr. O’Neil, this process commonly involved techniques such as wearing a plastic suit, sitting in a sauna, and avoiding food and fluids. Based on the testimony of Dr. Conant-Norville, the Ritalin might have been of some help in weight loss and, because it can have a calming and focusing effect, it is conceivable that the pill may have aided Mr. O’Neil’s preparation for the competition. The firefighter’s exam for which he was studying wasn’t taken until June 27, 2009, more than two months after the Championships, yet approximately two days before the Championships he ingested the Ritalin tablet. Mr. O’Neil is an experienced elite athlete, having been in the USADA registered testing pool for several years and having considerable familiarity, as indicated by his testimony and USADA records, with the anti-doping rules. He had lived at the OTC where he attended USADA educational programs, yet he did not utilize the USADA DRO prior to taking the Ritalin tablet. In his Brief, he stated that, “Had he consulted the WADA specified substance list to see if Adderall (or even Ritalin) was contained therein, he would have been unsuccessful.” This was not a convincing argument; a quick log-on to the USADA DRO for the drugs, Ritalin and Adderall, would have provided a clear answer, and from his testimony he knew how to do so.

8.7 Mr. O’Neil argued that his case was similar to that of *USADA v. Brunemann*. A close examination of the *Brunemann* case indicates, however, that Ms. Brunemann was a less experienced athlete, having been in the USADA testing program for only 10 months when her

positive result occurred. In addition, Ms. Brunemann's test was an out of competition test taken during a time when she had no forthcoming events. The arbitration panel in that case described her as naïve. Mr. O'Neil cannot readily be described as naïve in matters of drug testing. In fact, his conduct raises several unanswered questions, all of which lead the Arbitrator to the conclusion that Mr. O'Neil deviated considerably from the expected standard of behavior. Given his experience, why would he ingest a non-prescribed medication just before a major competition without checking with DRO? Given the magnitude of this case to his athletic future, why would he not work out a way to have Mr. Wright, the donor of the Ritalin, testify as to why Mr. O'Neil sought or accepted the pill? And as to Ritalin's impact on performance, Dr. Stripp was unable to provide testimony sufficient to convince the Arbitrator to his comfortable satisfaction that the ingestion of Ritalin would not enhance performance. Could not the Ritalin have aided Mr. O'Neil in his preparation by helping with weight loss, focus and relaxation?

8.8 In *USADA v. Nathan Piasecki*, the Arbitrator determined that Mr. Piasecki, a 25 year old elite wrestler living and training at the OTC and a member of the 2006 National Team, failed to establish that his negligence was not significant. In taking the nutritional supplement 6-OXO that contained DHEA, a steroid precursor banned by USADA/WADA, the Arbitrator noted that Mr. Piasecki, as an elite athlete, "should have known and could have known that supplements are to be taken with the utmost caution." Mr. O'Neil likewise "should have known and could have known" that taking any substance – let alone a prescription medicine for which he had no doctor's authorization – immediately prior to a major Championships was imprudent.

8.9 Mr. O'Neil did not sustain his burdens of proof with respect to the applicability of Article 10.4. He did not successfully establish by a balance of probability how the Ritalin entered his body, nor did he produce sufficient corroborating evidence in addition to his testimony to

establish to the comfortable satisfaction of the Arbitrator the absence of an intent to enhance sport performance. In assessing his degree of negligence in light of all the facts, it is deemed to be significant. Consequently, his alternative argument for reduction of the period of Ineligibility under Article 10.5.2, fails as well. Moreover, the circumstances of his case are not exceptional on the facts; as the Comment to Article 10.5 states, Articles 10.5.1 and 10.5.2 "...are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases."

8.10 Mr. O'Neil's Brief makes an argument for proportionality because the IJF has changed the way in which an athlete qualifies for the Olympic Games; that is, an athlete must now accumulate points in competition over time to qualify. In the Comment to Article 10.5.2, it states that in explaining the athlete's departure from the expected standard, "... the timing of the sporting calendar would not be [a] relevant factor[s] to be considered in reducing the period of Ineligibility under this Article." Mr. O'Neil's actions – avoidable as they were if he had engaged in reasonable due diligence or had elected not to compete – do not support a reduction in the period of Ineligibility based on proportionality. And unlike *Piasecki*, where proportionality was argued unsuccessfully even though the decision made him ineligible to qualify for the 2008 Olympic Games, Mr. O'Neil will have an opportunity to resume his quest for participation in the 2012 Olympic Games. Finally, in *Warren v. USADA (CAS 2008/A/1473, July 24, 2008)*, the Panel discussed the matter of proportionality at page 22 of its decision: "It has become commonplace in cases heard by Doping Tribunals for proportionality to be argued as a basis for reducing an otherwise applicable sanction. As has been pointed out in many cases, the provisions of the Code already factor in the principle of proportionality [See for example CAS 2004/A/690 Hipperdinger

v. A.T.P.]” By way of illustration, an athlete is given an opportunity to prove “No Fault or Negligence” or “No Significant Fault or Negligence” under Articles 10.5.1 or 10.5.2, respectively.

8.11 Mr. O’Neil carried himself well in testimony. He acknowledged his mistake and took responsibility for it. Given his timely admission, the Arbitrator believes that this is a case in which the commencement date of the period of Ineligibility should begin from the date of sample collection, namely April 18, 2009. Following his admission, he assisted in expediting his case, and reducing its cost, by waiving his Right to “B” Sample Analysis and Right to Contest Laboratory Findings, by agreeing to the Provisional Suspension, and by entering into the Stipulation.

8.12 Having reviewed the totality of the circumstances presented by this case, the Arbitrator finds that the Respondent did not sustain his burdens of proof with respect to Article 10.4, or in the alternative, Article 10.5.2. Similarly, he did not make a sufficient argument for proportionality. A two (2) year period of Ineligibility shall be imposed pursuant to Article 10.2. Given his admission in accordance with the provisions of Article 10.9.2, the period of Ineligibility shall begin on April 18, 2009.

9. DECISION AND AWARD

On the basis of the foregoing facts and legal considerations, this Arbitrator renders the following decision:

9.1 Mr. O’Neil has committed a doping violation under Article 2.1 of the WADC.

9.2 Pursuant to Article 10.2, Mr. O’Neil shall be ineligible to compete for a period of two (2) years.

9.3 Since Mr. O’Neil made a timely admission before competing again of his anti-doping violation in accordance with Article 10.9.2 (and additionally, he agreed to a Provisional


Suspension in writing on June 10, 2009 and has not competed during the period of such Provisional Suspension), the period of Ineligibility shall start on the date of sample collection, namely April 18, 2009. Mr. O'Neil has not yet served more than one-half of the period of Ineligibility; therefore, his period of Ineligibility shall be from April 18, 2009 to April 18, 2011.

9.4 The parties shall bear their own attorney's fees and costs associated with this arbitration.

9.5 The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the Arbitrator, shall be borne entirely by USADA and the United States Olympic Committee.

9.6 This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: December 9, 2009


Paul E. George, Arbitrator