



On March 14, 2005, a hearing was conducted in Denver, Colorado, before three Arbitrators selected pursuant to the American Arbitration Association Procedures for Arbitration in conjunction with the Court of Arbitration for Sport. The Claimant was represented by Travis T. Tygart, attorney, and the Respondent was represented by Howard L. Jacobs, attorney.

Prior to the hearing, the parties entered into a Stipulation of Uncontested Facts and Issues, set forth below. The only issue to be decided by this panel was the issue of sanction.

## II. Stipulation of Uncontested Facts and Issues:

The USADA and Mr. Sahin stipulated and agreed to, for purposes of all proceedings involving USADA urine specimen number 481826, the following:

1. That the USADA Protocol for Olympic Movement Testing governs the hearing for an alleged doping offense involving USADA specimen number 481826;
2. That Federation Internationale des Luttes Associees ("FILA") definitions of doping, Classes of Prohibited Substances and Prohibited Methods, and sanctions in effect at the time of the test are applicable to this hearing for the doping offense involving specimen number 481826;
3. That Mr. Sahin gave the urine sample designated as USADA specimen 481826 on April 10, 2004, at the National Championships;
4. That each aspect of the sample collection and processing for the A and B bottles of USADA specimen number 481826 was conducted appropriately and without error;
5. That the chain of custody for USADA specimen number 481826 from the time of collection and procession at the collection site to the receipt of the sample by the World Anti-Doping Agency accredited laboratory at the University of California in Los Angeles ("UCLA Laboratory") was conducted appropriately and without error;
6. That the UCLA Laboratory's chain of custody for USADA specimen number 481826 was conducted appropriately and without error;
7. That the UCLA Laboratory, through accepted scientific procedures and without error, found the presence of the prohibited substance phentermine in both the A and B bottles of USADA specimen number 481826;
8. That phentermine is a substance listed on the FILA list of Classes of Prohibited Substances and Prohibited Methods;
9. That the remaining issue to be determined concerning this first doping offense by Mr. Sahin is the length of the period of ineligibility to be imposed for this first doping violation. Further on this issue, Mr. Sahin reserves his right to argue for the elimination or reduction of the period of ineligibility under the applicable rules in the event that he is able to prove the source of the positive specimen (i.e. how the prohibited substance entered his system) and that he bears "no fault or

negligence" or "no significant fault or negligence," as defined by the applicable rules, for the violation.

### III. Other Facts in Evidence

Faruk Sahin is a naturalized U.S. Citizen originally from Turkey. He won several national titles in Turkey, and in 2000, he was the top wrestler in his weight class. According to Mr. Sahin, although he was ranked number one, the past Olympic wrestler in his weight class was selected to represent Turkey in the 2000 Olympics, and Mr. Sahin was told that he was too young.

In search of "fair competition" Mr. Sahin immigrated to the United States just before the 2000 Olympics and moved into the U.S. Olympic Training Center in Colorado Springs, Colorado. In late 2003, early 2004, he joined the U.S. Army, became a U.S. citizen, and joined the Army's World Class Athletes Program ("WCAP"). Mr. Sahin, an outstanding wrestler, had not lost a match in the last 4 to 5 years, and was the number one U.S. wrestler in his class when he won the U.S. Nationals in 2004.

Mr. Sahin testified that, as a result of lifting weights, he had severe and recurrent back pain, beginning in November 2003. He took two shots of torodal, a non-steroidal anti-inflammatory on April 10, 2004 at the Nationals and listed them on his disclosure form. He stated that he asked the Doctor whether it was ok to take the shots or if it was against the rules. Although Mr. Sahin claimed not to know much about the anti-doping rules, he apparently knew enough to ask the question.

Mr. Sahin also described the great care with which he approached nutrition and what he ingested, often shopping for natural or organic foods. Mr. Sahin testified that he controlled his weight through diet and exercise, and never had trouble "making weight".

Mr. Sahin gave an explanation for his ingestion of phentermine. He stated that on or before April 6, before leaving for the Nationals, during a heated argument, he complained to his now ex-wife, Sumeyye Akdeniz, about his back pain. Ms. Akdeniz testified that out of anger and jealousy, she threw her pill box at him and told him to take "the white one".

Mr. Sahin and Ms. Akdeniz both testified that the pill box contained,

- a) a pink capsule which was an over the counter herbal vitamin called "Essentials for Life Multivitamin" #1;
- b) a brown capsule which was an over-the-counter vitamin called "Essentials for Life Multivitamin" #2;
- c) a blue pill which was an over the counter natural medication for back and leg pain; and
- d) a white pill with tiny blue spots, which was phentermine.

Mr. Sahin testified that he believed that the white pill was an over the counter herbal pain reliever, called "Leg Cramps with Quinine," which Ms. Akdeniz also used at the time. He testified that he was asking Ms. Akdeniz for something for pain because she "was into natural vitamins, herbal vitamins and that he knew that she took natural pain killers". He also stated that she sold various supplements, and had about 50 bottles in the house.

Ms. Akdeniz testified that when she threw her pill box at Mr. Sahin, she did not say that the white pill was phentermine nor did she say that the pill was an herbal pain medication. She simply said, "take the white pill." It is also important to note that Mr. Sahin did not ask, nor investigate, what the white pill was.

Ms. Akdeniz also testified that while she thought that the pill was the pain medication when she threw it, it occurred to her while the box was still in the air that the pill was phentermine. She stated that because she was angry with Mr. Sahin, she did not tell him that the pill was phentermine. She also testified that she knew that phentermine was prohibited and that Mr. Sahin would be tested, but at the time she did not care.

Ms. Akdeniz further testified that she was prescribed phentermine by a doctor, but when questioned further, she testified that she did not get the drug from a pharmacy, but rather, the drug was given to her without a written prescription in her doctor's office, on and off, for about a year. She also testified that she was well aware of the anti-doping rules, that she knew that phentermine was a banned substance and that she and Mr. Sahin used to talk about it regularly. Notwithstanding her claims, Mr. Sahin testified that he had never heard of phentermine until he tested positive.

Mr. Sahin testified that, although he was in pain, he did not take the white pill right away; rather, he waited several days before taking it. According to his testimony, he received the pill from his wife in April 6 before leaving for the Nationals in Las Vegas. He checked-in on April 7, weighed-in on April 8, took the white pill on April 9 and competed and provided a urine sample on April 10.

As noted earlier, Mr. Sahin listed three vitamin pills and the torodal shots on his doping disclosure form signed April 10, but did not list the white pill. The disclosure form requires athletes to declare any medications and other substances, including vitamins, minerals, herbs and other dietary supplements, taken during the preceding three days.

Testimony was also provided by Mr. Rob Coley, a retired Colonel currently employed as a civilian by the Army in connection to the WCAP program. He testified regarding Mr. Sahin's character, the WCAP program, including Mr. Sahin's uncertain future with the program, and Mr. Sahin's deployment orders.

U.S. Army Staff Sgt. Shon Lewis, coach of the U.S. Army World Class Athlete Program and Mr. Sahin's wrestling coach, also served as a character witness. He testified regarding Mr. Sahin's character, training, match results and back pain. He did not know about the torodal shots, and had no direct evidence regarding the phentermine.

The final witness was Richard L. Hilderbrand, Ph.D., the Director of Scientific Programs for USADA. He testified that phentermine is a stimulant that is banned during, but not out of, competition; and that he reviewed Mr. Sahin's lab packet. He further testified that the test did not provide concentration levels, so no scientific conclusions can be drawn with regard to when, or how much phentermine Mr. Sahin ingested.

#### IV. Relevant Code Sections

As noted above, the parties stipulated that the FILA Anti-Doping Regulations apply to this matter. The pertinent provisions are as follows:

**2.1 The presence of a Prohibited Substance or its Metabolites or Markers in an Wrestler's bodily Specimen**

2.1.1 It is each Wrestler's personal duty to ensure that no Prohibited Substance enters his or her body. Wrestlers are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Wrestler's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

**10.2 Imposition of Ineligibility for Prohibited Substances and Prohibited Methods**

Except for the specified substances identified in Article 10.3, 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) and Article 2.6 (Possession of Prohibited Substances and Methods) shall be:

**First violation: Two (2) years' Ineligibility.**

**Second violation: Lifetime Ineligibility.**

However, the Wrestler or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 10.5.

**10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances**

10.5.1 If the Wrestler establishes in an individual case involving an anti-doping rule violation under Article 2.1 (presence of Prohibited Substance or its Metabolites or Markers) . . . that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Wrestler's Specimen in violation of Article 2.1 (presence of

Prohibited Substance), the Wrestler must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated.

- 10.5.2 ... If a Wrestler establishes in an individual case involving such violations that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years.

When a Prohibited Substance or its Markers or Metabolites is detected in an Wrestler's Specimen in violation of Article 2.1 (presence of Prohibited Substance), the Wrestler must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

#### **10.8 Commencement of Ineligibility Period**

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 to be served.

#### **APPENDIX 1 – DEFINITIONS**

No Fault or Negligence. The Wrestler's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method.

No Significant Fault or Negligence. The Wrestler's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.

#### **V. Analysis**

Respondent argues that Mr. Sahin's two year suspension from competition should be eliminated or reduced based on exceptional circumstances. Respondent argues that the phentermine entered his system as a result of sabotage by his now ex-wife. As evidence of sabotage, Respondent relies primarily on the testimony of Ms. Akdeniz, his ex-wife, who stated that she knew when she threw the pill box at Mr. Sahin and told him to "take the white one," that the white pill was phentermine.

Under section 10.5.1, Respondent argues that since Mr. Sahin was misled, that he had "no fault or negligence" as defined by the code. Alternatively, Respondent argues that under 10.5.2, he at least bears "no significant fault or negligence". In addition, Respondent argues that a two-year suspension would have a disproportionately adverse impact on the athlete, because his current deployment will take him to Texas and then to Iraq.

Claimant, USADA, argues that since the Respondent stipulated to the doping offense and is not contesting the laboratory analysis, that there is a presumption of guilt against the athlete, and it is up to the athlete to show why the maximum sanction should not be imposed. They argue that under the FILA rules, Respondent has the burden to prove the source of his positive sample and that he bears "no fault or negligence" or "no significant fault or negligence" for the doping offense.

The first issue for the Panel to consider is whether exceptional circumstances exist that would warrant the elimination or reduction of the sanction under section 10.5.1 or 10.5.2. We accept the proffer of evidence that the pill came from Mr. Sahin's ex-wife and that Mr. Sahin freely ingested it. This satisfies the Respondent's requirement to show how the prohibited substance entered the athlete's body under 10.5.1 and 10.5.2.

However, we reject the argument that the Respondent bears no fault or negligence for the doping violation under section 10.5.1. Mr. Sahin would have to show that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or been administered the prohibited substance. Mr. Sahin has not satisfied that standard in this case. By definition, it is not reasonable to take an unlabelled pill that did not come from its original package without at least trying to verify what is in the pill.

The Panel then considered whether the Respondent bears no significant fault or negligence under section 10.5.2. "No Significant Fault or Negligence" is defined in the Appendix as establishing that the wrestler's fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.

In other words, did the Respondent act reasonably under the circumstances to avoid ingestion of a prohibited substance such that a reduction of the suspension is warranted? We find that he did not. When viewed in the totality of the circumstances, we find that Mr. Sahin was significantly responsible for his anti-doping rule violation. We find his actions to be reckless and inconsistent with his own patterns of caution with regard to what he puts in his body.

Specifically, Respondent never asked what the pill was. He only assumed that it was herbal pain relief because he had seen his wife take such herbal medications in the past and he had been seeking pain relief when she threw the pill box at him. This type of assumption cannot be tolerated. His assumption is also undercut by the fact that the herbal pain medication is a slightly different color and shape from the phentermine.

The Respondent also argues that an athlete should be allowed to unequivocally trust what a spouse gives them, and one might assume, therefore not even have to ask what they are being given by their spouse. It is hard to imagine a situation where this type of blind trust would be acceptable. In this case, Mr. Sahin's reliance on his trust in his wife is also seriously undercut by the fact that she threw the pill box at him during an argument while in the midst of a divorce.

We cannot allow an athlete's lack of questioning and lack of investigation to become the standard by which athletes circumvent the anti-doping rules. Under the standard advocated by the Respondent in this case, athletes could avoid sanction by ensuring that they do not know what is in the medications given to them by loved ones. Spouses could dope the athletes, and as long as they do it out of spite or anger instead of with intent to cheat, the athlete could avoid sanction by claiming sabotage. This would lead to a standard where it is not the athlete's negligence that matters but rather the spouses intent that would matter. Under the standard proposed by the Respondent, so long as an athlete doesn't ask any questions or conduct any independent investigation they would avoid sanction. The Panel believes that to support a finding of sabotage sufficient to reduce a sanction, the panel would at least have to find that the athlete took all reasonable care to avoid a doping violation.

Since it is the athlete's behavior that is at issue, this panel finds that Mr. Sahin was substantially negligent when he ingested an unlabelled, unwrapped pill that his wife threw at him and that he had carried around for at least 4 days. Under the totality of the circumstances, his actions were not reasonable and showed such an extreme lack of care that one can begin to wonder whether the ingestion of phentermine was purposeful. This further suspicion is raised by the fact that Mr. Sahin did not even list the medication on his doping control form along with the other vitamins and pain medication that he listed.

Finally, the Respondent argues that an arbitration panel could exercise discretionary powers where there is a very limited degree of fault by the athlete to consider whether the length of suspension will have a disproportionate adverse impact on the athlete (ATP v. Oliver). Respondent argues that because he has been removed from the WCAP program as a result of the anti-doping violation, he has been deployed by the Army to serve in a war zone.

This panel need not reach any conclusions as to whether a service member's deployment constitutes a disproportionate adverse impact, because Mr. Sahin's level of fault far exceeded the threshold of "very limited".

## VI. Decision and Award

1. Respondent, Mr. Sahin, has not demonstrated that he has no fault or negligence justifying elimination of the sanction imposed by USADA under section 10.5.1,

nor has he shown that he has no significant fault or negligence justifying a reduction in the sanction under section 10.5.2.

2. The two-year suspension, which began on May 18, 2004, when Mr. Sahin accepted a provisional suspension, is affirmed.
3. The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne by the United States Anti-Doping Agency.
4. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.
5. This award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Date: \_\_\_\_\_

Chairman Barbara L. Shycoff

*Barbara L. Shycoff*

Date: \_\_\_\_\_

Arbitrator John T. Wendt

Date: \_\_\_\_\_

Arbitrator Hon. Hugh L. Fraser

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Chairman Barbara L. Shycoff \_\_\_\_\_

Date: \_\_\_\_\_

Arbitrator John T. Wendt \_\_\_\_\_

Date: \_\_\_\_\_

Arbitrator Hon. Hugh L. Fraser

*Hugh L. Fraser*