

comprehensive national anti-doping program encompassing testing, results management, education and research, while also developing programs, policies, and procedures in each of those areas.

2. Desmond Jackson (“Respondent”) is a 21-year-old Paralympic track and field athlete residing in Durham, North Carolina. Respondent participated in the U.S. Paralympics Track & Field Trials on June 17-20, 2021, which were conducted to select U.S. track and field athletes for the Tokyo 2020 Paralympic Games.¹
3. Claimant was represented in this proceeding by Jeff T. Cook, Esq., USADA General Counsel, Ted Koehler, Esq., USADA Legal Affairs & Trial Counsel Manager, Chelsea Busa, USADA Pro & Emerging Sports Paralegal and Katie Crouse, USADA Olympic & Paralympic Programs Paralegal.
4. Respondent was represented in this proceeding by Howard L. Jacobs, Esq., Lindsay S. Brandon, Esq. and Aaron Mojarras, Esq., of the Law Offices of Howard L. Jacobs.
5. Claimant and Respondent shall be referred to collectively as the "Parties" and individually as a "Party."

II. ISSUE

6. On June 18, 2021, Respondent was selected by Claimant for an in-competition test at the U.S. Paralympics Track and Field Trials. On July 8, 2021, Respondent was notified by Claimant that his sample returned an adverse analytical finding for administration of an anabolic agent of exogenous origin and a provisional suspension was imposed. On July 8, 2021, Respondent voluntarily accepted the laboratory finding. By letter of July 28, 2021, Claimant charged Respondent with violation of Articles 2.1 (presence) and 2.2 (use/attempted use) of the World Anti-Doping Code (the “WAD Code”).²
7. Respondent contends, and Claimant does not refute, that: (1) the adverse analytical finding resulted from a DHEA supplement that Respondent took when this supplement was given to him by his coach, Jamaal Daniels, on June 18, 2021, and (2) Respondent took this supplement without knowing that it contained a prohibited substance.

¹ Because of COVID-19 the Tokyo 2020 Paralympic Games were held on August 24 - September 5, 2021.

² Further reference to Article in this Award refers to the Articles of the WAD Code.

8. Since Respondent accepts that he committed anti-doping rule violations as set forth in Claimant's charging letter, the sole issue in this proceeding is the appropriate sanction to be applied.

III. JURISDICTION

9. This matter is properly before this Arbitrator.
10. Sections 4, 5 and 6 of the USADA Protocol, based on the WAD Code and the rules of sports organizations, including the International Olympic Committee ("IOC") International Paralympic Committee ("IPC") and United States Olympic & Paralympic Committee ("USOPC"), set forth criteria that subject athletes, athlete support personnel and other persons to the USADA Protocol. A number of these criteria apply to Respondent.
11. Further, this arbitration was conducted by concurrence of the Parties. Claimant, by letter dated July 28, 2021, notified Respondent that he was being charged with anti-doping rule violations and further advised Respondent that if he "chose to contest the sanction proposed" by Claimant, he had the right to "request a hearing . . . before the American Arbitration Association ("AAA")." Respondent responded via email on July 28, 2021, contesting "the sanction being sought" and requesting "a hearing pursuant to the USADA Protocol." Claimant then initiated this proceeding by notifying the AAA by letter of July 29, 2021, of Respondent's request to arbitrate.³
12. The USADA Protocol, at Paragraph 17, provides in pertinent part, that, "all hearings will take place in the United States before the independent arbitral body using the Arbitration Procedures." The AAA has been designated as the independent arbitral body to hear anti-doping disputes in the U.S. The AAA uses the Arbitration Procedures in hearing anti-doping disputes.
13. Neither Party disputed the AAA's jurisdiction over this matter or that Respondent is properly subject to this proceeding. Both Parties participated in this proceeding without objection.⁴

³ R-4 of the Arbitration Procedures provides that "[a]rbitration proceedings shall be initiated by USADA with the Arbitral Body after the Athlete, Athlete Support Person, or other Person requests a hearing in response to being charged with an anti-doping rule violation or other dispute subject to arbitration under the USADA Protocol."

⁴ R-7c of the Arbitration Procedures requires that "[a] party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection."

14. Additionally, neither Party objected to the Arbitrator designated to hear this matter.

PROCEDURAL HISTORY

15. This proceeding was initiated on July 29, 2021, pursuant to Claimant's letter notifying the AAA of Respondent's request for a hearing.
16. On August 13, 2021, the Arbitrator held a preliminary hearing with the Parties as provided for in R-15 of the Arbitration Procedures. On August 16, 2021, the Arbitrator issued Preliminary Hearing and Scheduling Order Number 1, which, among other things, set dates for the submission of pre-hearing briefs, exhibits and designation of potential witnesses and set the hearing date for September 23, 2021.
17. Prior to commencement of the hearing the Parties submitted pre-hearing briefs, offered exhibits and listed potential witnesses as provided for in Preliminary Hearing and Scheduling Order Number 1.
18. On September 23 3021, the Arbitrator held a full evidentiary hearing by video conference in which both Claimant and Respondent participated.⁵
19. During the hearing the Parties called witnesses to testify. Each Party was afforded the opportunity to ask questions of the witnesses and did so as they considered necessary.
20. The Arbitrator heard from the following witnesses, all of whom were sworn:

For Respondent:

- Desmond Jackson, Respondent.
- Deborah Jackson, Respondent's mother.
- Stan Patterson, Respondent's prosthetist.
- Minnie Forte Brown, a lifelong friend of Respondent.

For Claimant:

- Matthew Fedoruk, Ph.D., USADA Chief Science Officer.
- Tammy Hanson, USADA Elite Education Manager.

⁵ R-30a of the Arbitration Procedures provides that "[a]ll hearings shall take place by telephone or video conference unless the parties and the arbitrator agree to an in-person hearing."

21. The Parties submitted numerous exhibits, which were admitted into evidence at the start of the hearing without objection.
22. The Parties also provided opening and closing statements and gave arguments and presented their positions on various issues that arose during the hearing.
23. The Parties declined to submit post-hearing briefs.
24. The rules of evidence were not strictly enforced, and rules of evidence generally accepted in administrative proceedings were applied.⁶
25. At the conclusion of the hearing the Arbitrator inquired of the Parties whether they had “further proofs to offer or witnesses to be heard.” R-30 of the Arbitration Procedures. The Parties indicated that they did not.
26. The Arbitrator declared the hearing closed as of September 23, 2021.

IV. FACTUAL SUMMARY

27. Respondent is a male Paralympic athlete who competes in Paralympic track and field, in the sprint and long jump events. Respondent resides in Durham, North Carolina. Respondent was 21 years old at the time of his anti-doping rule violation.
28. Respondent was born with a limb difference that resulted in the amputation of his left leg when he was nine months old. In 2010 Respondent was introduced to the Challenged Athletes Foundation, which facilitated his future athletic career. Respondent then joined Carolina Cruisers, which offered opportunities for disabled athletes. Respondent is a graduate of Campbell University.
29. Respondent has competed at national and international events since 2015, including the 2015 and 2017 U.S. Paralympics Track & Field National Championships, several World Para Athletics Grand Prix events, the 2019 World Para Athletics Championships and the Rio 2016 Paralympic Games. Respondent was 16 years old when he competed at the Rio Paralympic Games.
30. Respondent competed at the U.S. Paralympics Track & Field Trials, which were conducted as part of the selection process for the Tokyo 2020 Paralympic Games. The Trials took place June 17-20, 2021.

⁶ R-26a of the Arbitration Procedures provides that “conformity to legal rules of evidence shall not be necessary.”

31. Respondent has received considerable anti-doping education, completing the USADA Athlete's Advantage Tutorial in 2016, 2018, 2020 and 2021.
32. Respondent has been in the Registered Testing Pool intermittently since 2015 and continuously since April 1, 2020.
33. Respondent's coach, Jamaal Daniels, started coaching Respondent in 2015, when Respondent was 15 years old. On June 18, 2021, during the U.S. Paralympics Track & Field Trials, Daniels gave Respondent two DHEA pills. DHEA is an over-the counter supplement.
34. On June 18, 2021, Respondent was selected by Claimant for an in-competition test at the U.S. Paralympics Track & Field Trials. Respondent did not declare DHEA on his Doping Control Form.
35. Excluding Respondent's June 18, 2021, test, Respondent has been tested 11 times, all of which were out-of-competition. None of these tests were positive.
36. On July 7, 2021, the UCLA Olympic Analytical Laboratory notified Claimant that Respondent's June 18, 2021, sample returned an adverse analytical finding for administration of an anabolic agent of exogenous origin.
37. On July 8, 2021, Claimant notified Respondent of the laboratory finding and imposed a provisional suspension on Respondent.
38. The laboratory finding is consistent with a substance contained in DHEA.
39. On July 8, 2021, the same day Respondent was notified of his positive test, he voluntarily accepted the laboratory finding and waived his right to have the "B" sample tested.
40. Upon receiving notification of his positive test, Respondent contacted his coach to determine if his coach could explain why Respondent had tested positive and asked what his coach had given him on June 18, 2021, at the U.S. Paralympics Track & Field Trials. Subsequently, Respondent also contacted and provided information to Claimant regarding his positive test and the involvement of Respondent's coach in Respondent's positive test.
41. On July 28, 2021, Claimant charged Respondent with violation of Articles 2.1 (presence) and 2.2 (use/attempted use) of the WAD Code.

42. As a result of positive test, on July 28, 2021, Respondent withdrew from consideration for the 2020 U.S. Paralympic Team that would compete in the Tokyo 2020 Paralympic Games.

V. APPLICABLE LAW

43. In their submissions, the Parties rely on the provisions of the WAD Code, USADA Protocol, Arbitration Procedures and the USOPC National Anti-Doping Policy, on CAS and AAA jurisprudence and on an Anti-Doping Agency of Kenya (“ADKA”) case. No law was cited by the Parties and no argument was made by the Parties that required the Arbitrator to deviate from the directives of the WAD Code, USADA Protocol, Arbitration Procedures, USOPC National Anti-Doping Policy, CAS and AAA jurisprudence and ADKA case.

44. The relevant WAD Code provisions applicable to this proceeding are as follows:

2. Anti-Doping Rule Violations

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.

2.1.1 It is the Athletes’ personal duty to ensure that no Prohibited Substance enters their bodies. 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 rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed or, where the Athlete’s B Sample is analyzed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample; or where the Athlete’s A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. 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 rule violation for Use of a Prohibited Substance or a Prohibited Method.

3. Proof of Doping

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 a 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.

10. Sanctions on Individuals

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility imposed for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility shall be four years where:

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the antidoping rule violation was **not intentional**.*

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An antidoping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence:

10.6.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.6.1

If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person’s degree of Fault, 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 years.”

10.7 Elimination, Reduction, or Suspension of Period of Ineligibility or Other Consequences for Reasons Other than Fault

10.7.1 Substantial Assistance in Discovering or Establishing Code Violations

10.7.1.1 An Anti-Doping Organization with Results Management responsibility for an antidoping rule violation may, prior to an appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the Consequences (other than Disqualification and mandatory Public Disclosure) imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body which results in: (i) the Anti-Doping Organization discovering or bringing forward an anti-doping rule violation by another Person; or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the Anti-Doping Organization with Results Management responsibility; or (iii) which results in WADA initiating a proceeding against a Signatory, WADA-accredited laboratory or Athlete passport management unit (as defined in the International Standard for Laboratories) for non-compliance with the Code, International Standard or Technical Document; or (iv) with the approval by WADA, which results in a criminal or disciplinary body bringing forward a criminal offense or the breach of professional or sport rules arising out of a sport integrity violation other than doping. After an appellate decision under Article 13 or the expiration of time to appeal, an Anti-Doping Organization may only suspend a part of the otherwise applicable Consequences with the approval of WADA and the applicable International Federation.

The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport, non-compliance with the Code and/ or sport integrity violations. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this Article must be no less than eight (8) years. For purposes of this paragraph, the otherwise applicable period of Ineligibility shall not include any period of Ineligibility that could be added under Article 10.9.3.2.

If so requested by an Athlete or other Person who seeks to provide Substantial Assistance, the Anti-Doping Organization with Results Management responsibility shall allow the Athlete or other Person to provide the information to the Anti-Doping Organization subject to a Without Prejudice Agreement.

If the Athlete or other Person fails to continue to cooperate and to provide the complete and credible Substantial Assistance upon which a suspension of Consequences was based, the Anti-Doping Organization that suspended Consequences shall reinstate the original Consequences. If an Anti-Doping Organization decides to reinstate suspended Consequences or decides not to reinstate suspended Consequences, that decision may be appealed by any Person entitled to appeal under Article 13.

10.7.1.2 To further encourage Athletes and other Persons to provide Substantial Assistance to Anti-Doping Organizations, at the request of the Anti-Doping Organization conducting Results Management or at the request of the Athlete or other Person who has, or has been asserted to have, committed an anti-doping rule violation, or other violation of the Code, WADA may agree at any stage of the Results Management process, including after an appellate decision under Article 13, to what it considers to be an appropriate suspension of the otherwise-applicable period of Ineligibility and other Consequences. In exceptional circumstances, WADA may agree to suspensions of the period of Ineligibility and other Consequences for Substantial Assistance greater than those otherwise provided in this Article, or even no period of Ineligibility, no mandatory Public Disclosure and/or no return of prize money or payment of fines or costs. WADA's approval shall be subject to reinstatement of Consequences, as otherwise provided in this Article. Notwithstanding Article 13, WADA's decisions in the context of this Article 10.7.1.2 may not be appealed.

10.7.1.3 If an Anti-Doping Organization suspends any part of an otherwise applicable sanction because of Substantial Assistance, then notice providing justification for the decision shall be provided to the other Anti-Doping Organizations with a right to appeal under Article 13.2.3 as provided in Article 14.

In unique circumstances where WADA determines that it would be in the best interest of anti-doping, WADA may authorize an Anti-Doping Organization to enter into appropriate confidentiality agreements limiting or delaying the disclosure of the Substantial Assistance agreement or the nature of Substantial Assistance being provided.

10.13 Commencement of Ineligibility Period

Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.11.3.1 If a Provisional Suspension is imposed on and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Athlete or other Person does not respect a Provisional Suspension, then the Athlete or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.

Appendix 1 Definitions

Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

No Fault or Negligence: The Athlete or other Person'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 or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system

No Significant Fault or Negligence: The Athlete or other Person's establishing that any 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. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

Substantial Assistance: For purposes of Article 10.7.1, a Person providing Substantial Assistance must: (1) fully disclose in a signed written statement or recorded interview all information he or she possesses in relation to anti-doping rule violations or other proceeding described in Article 10.7.1.1, and (2) fully cooperate with the investigation and adjudication of any case or matter related to that information, including, for example, presenting testimony at a hearing if requested to do so by an Anti-Doping Organization or hearing panel. Further, the information provided must be credible and must comprise an important part of any case or proceeding which is initiated or, if no case or proceeding is initiated, must have provided a sufficient basis on which a case or proceeding could have been brought.

VI. DISCUSSION AND MERITS

A. The Default or Starting Sanction

45. There is no dispute that Respondent committed anti-doping rule violations as set forth in Articles 2.1 (presence) and 2.2 (use/attempted use). Respondent took a DHEA supplement on June 18, 2021. Respondent's sample when examined by the laboratory returned an adverse analytical finding for administration of an anabolic agent of exogenous origin, consistent with a substance contained in DHEA supplements. Anabolic agents of exogenous origin are prohibited substances on the WADA prohibited list.

46. Pursuant to Articles 10.2 and 10.2.1 the period of ineligibility imposed for a violation of Article 2.1 or Article 2.2 is four years.
47. However, pursuant to Articles 10.2.1.1 and 10.2.1.2 this period of ineligibility is reduced to two years if (i) the anti-doping rule violation does not involve a specified substance or a specified method and (ii) the athlete can establish that the antidoping rule violation was not intentional.⁷
48. An anabolic androgenic of exogenous origin is a non-specified substance (does not involve a specified substance) as identified on the WADA prohibited list.
49. Article 10.2.3 provides that the term “intentional” is meant to identify those athletes who (i) engage in conduct that they knew constituted an anti-doping rule violation or (ii) knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.
50. Claimant and Respondent agree that pursuant to Article 10.2.3 Respondent’s taking DHEA was not intentional. Thus, as a default or starting sanction, Respondent’s period of ineligibility is 2 years.

B. Further Possible Reduction of Sanction

51. Article 10.6.2 states that if an athlete can establish that he or she bears no significant fault or negligence, the otherwise applicable period of ineligibility may further be reduced based on the athlete’s degree of fault, but the reduced period may not be less than one-half of the period of ineligibility otherwise applicable.
52. Claimant and Respondent agree that Respondent can establish that he bears no significant fault or negligence. Since Respondent’s default or starting sanction is 2 years, the range when considering a reduction of Respondent’s period of ineligibility is between 2 years (24 months) and one year (12 months).
53. Respondent proposes two different premises for determining his degree of fault.
54. First, Respondent contends that because he “delegated” the responsibility of vetting the supplements he took to his coach, the Arbitrator should apply the “delegation doctrine” in

⁷ Further, the Comment to Article 10.2.1.1 states that while it is possible, it is highly unlikely that in a doping case under Article 2.1 an athlete will be successful in proving that the athlete acted unintentionally without establishing the source of the prohibited substance.

determining Respondent's degree of fault. Claimant counters that use of the delegation doctrine is not proper for determining degree of fault under Article 10.6.2 and therefore should not be considered by the Arbitrator.

55. Second, Respondent states that if the Arbitrator does not accept that Respondent's fault should be assessed under the delegation doctrine, then his degree of fault would be assessed under the framework outlined in *Cilic v. ITF*, CAS 2013/A/2237 (2017). Claimant agrees that Respondent's degree of fault should be assessed under *Cilic*. However, Claimant and Respondent disagree as to the degree of Respondent's fault and thus disagree on how much Respondent's period of ineligibility should be reduced.
56. Additionally, Respondent asserts that after an analysis of his degree of fault, under either the delegation doctrine or *Cilic*, the Arbitrator should grant Respondent a further reduction of his sanction under Article 10.7.1, as Respondent provided substantial assistance to Claimant resulting in Respondent's coach being charged with and found to have committed an anti-doping rule violation. Claimant disagrees, countering that an arbitration tribunal does not have such authority; that only an anti-doping organization can reduce a sanction under Article 10.7.1.

C. Delegation Doctrine

57. Respondent asserts that the delegation doctrine should be used in assessing his degree of fault under Section 10.6.2.
58. Respondent states that athletes are permitted to delegate elements of their anti-doping obligations. As such, when an anti-doping rule violation occurs and an element of the athlete's obligations have been delegated, an arbitration tribunal should look to the circumstances surrounding the athlete's decision to delegate, including the athlete's choice of and oversight over the delegate.
59. For this proposition, Respondent relies on *Al Nahyan v. Fédération Equestre Internationale*, CAS 2014/A/3591 ¶¶ 169, 177 (2014), which states that although an athlete "cannot avoid strict liability" by his reliance on others, "the sanction remains commensurate with the athlete's personal fault or negligence in his selection and oversight of the physician, trainer, or advisor"
60. Further, Respondent cites *Sharapova v. ITF*, CAS 2016/A/4643 ¶¶ 85, 95 (2016), where the CAS Panel stated that in such a case, "the fault to be assessed is not that which is made by the delegate, but the fault made by the athlete in his/her choice" and that the "measure of the sanction to be imposed depends on the degree of fault."
61. Respondent points out that the CAS panel in *Sharapova* went on to state as follows:

the parties agreed before this Panel to follow the approach indicated by [Al Nayhan] (§177), i.e. that athletes are permitted to delegate elements of their antidoping obligations. If, however, an anti-doping rule violation is committed, the objective fact of the third party's misdeed is imputed to the athlete, but the sanction remains commensurate with the athlete's personal fault or negligence in his/her selection and oversight of such third party, or, alternatively, for his/her own negligence in not having checked or controlled the ingestion of the prohibited substance. In other words, the fault to be assessed is not that which is made by the delegate, but the fault made by the athlete in his/her choice. As a result, as the Respondent put it, a player who delegates his/her anti-doping responsibilities is at fault if he/she chooses an unqualified person as his/her delegate, if he/she fails to instruct him properly or set out clear procedures he/she must follow in carrying out the task, and/or if he/she fails to exercise supervision and control over him/her in carrying out the task. The Panel also concurs with this approach.

Id. ¶ 85.

62. Accordingly, Respondent submits that the assessment of his fault in this case must be made in consideration of the fact that Respondent delegated an element of his anti-doping obligations to his coach (that supplements provided by his coach would not contain banned substances), not to Respondent's fault level in committing the anti-doping rule violations.
63. Under the delegation doctrine, Respondent asserts that in determining his level of fault, the following should be assessed (i) whether Respondent's delegation was reasonable, (ii) whether Respondent properly instructed his coach on his nutrition program and the use of supplements and (iii) whether Respondent exercised proper control and supervision over his coach in ensuring that he would not take prohibited substances.
64. Under this analysis, Respondent contends that he is entitled to a significant reduction from the two-year period of ineligibility and that his sanction should be at the lowest end of the of the spectrum.
65. Claimant objects to the use of the delegation doctrine in Respondent's case.
66. First, Claimant asserts that there is no textual support in the WAD Code for Respondent's proposition that the delegation doctrine can be used in determining degrees of fault under Article 10.6.2. Claimant cites Article 2.1, which states that "[i]t is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies" and argues that nothing in the WAD Code authorizes an athlete to offload this responsibility onto another person.

67. Second, Claimant states that the delegation doctrine is fundamentally incompatible with the strict liability principle (i) as set forth in Articles 2.1 and 2.2 and (ii) as indicated in Comments 7 and 10 to Articles 2.1 and 2.2, which clearly, though indirectly, support the strict liability principle. Claimant contends that Respondent’s proposition undermines the core principle in the WAD Code and flatly contradicts a consistent line of CAS authority that athletes are personally responsible for what enters their bodies. Claimant cites three cases in support of its position. In the first case, Claimant points to the CAS panel’s statement that:

[i]t has been severally confirmed by CAS Panels that it would put an end to any meaningful fight against doping if an athlete was able to shift his/her responsibility with respect to substances which enter the body to someone else and avoid being sanctioned because the athlete himself/herself did not know of that substance.

WADA v. NSAM & Cheah & Ng & Masitah, CAS 2007/A/1395 ¶ 87 (2008) (internal quotation, citation, and italics omitted). The second case Claimant refers to is *FIS v. Johaug*, CAS 2017/A/5015 ¶ 195 (2017) in which the CAS panel stated that “[i]t has been consistently held in CAS decisions that an athlete cannot delegate away his or her responsibilities to avoid doping.” In the third case Claimant points out that the CAS panel indicated that “[t]here is no more consistent theme in CAS jurisprudence on anti-doping than that the duty of utmost caution or due diligence – the phrases are in context interchangeable – is a non-delegable duty.” *Stroman v. FEI*, CAS 2013/A/3318 ¶ 72 (2014).

68. Third, Claimant distinguishes the two cases upon which Respondent relies. Claimant correctly points out that *Al Nahyan* was an equine case in which the rider was held responsible for a prohibited substance found in the horse that the rider rode in the competition. The rider argued that because he had delegated the care and preparation of the horse to another person, he could not be held strictly liable for the prohibited substance found in the horse. *Id.* ¶ 171. Claimant indicates that the CAS panel rejected this argument, holding that “[t]he innocent athlete must, therefore, assume liability for the misdeed of the third-party doer.” *Id.* ¶ 173; *see also id.* ¶ 177. Claimant states that although the CAS panel noted that “the application of the strict liability rule in equine sport can pose imputation issues which differ from typical non-equine doping violations in which the doping of the athlete’s own body is the object of the rule violation,” *id.* ¶ 178, it certainly did not create a broad “delegation doctrine” applicable in non-equine cases. Distinguishing *Sharapova*, Claimant points out that the parties expressly agreed to follow the delegation approach. *Id.* ¶ 85. Claimant states that it has made no such agreement with Respondent in this case.

69. Fourth, Claimant states that the delegation issue has previously been decided in *USADA v. Dwyer*, AAA No. 01-19-0000-6431 (2019) where the AAA panel concluded that:

the delegation doctrine is inapplicable to assist Respondent in meeting his burden of proof that he was not significantly negligent. The delegation doctrine does not relieve Respondent of his personal responsibility to exercise utmost care in ensuring that he did not ingest or use any prohibited substances. As stated in *Johaug*, he “cannot delegate away his . . . responsibilities to avoid doping.” (¶ 195)

Id. 75 (quoting *Johaug* ¶195).

70. After considering the Parties’ arguments and submissions the Arbitrator declines to apply the delegation doctrine in determining Respondent’s degree of fault and thus the length of Respondent’s period of ineligibility.
71. First, Respondent cites no WAD Code provision supporting the delegation doctrine that he proposes. The WAD Code is founded on the premise of strict liability. Athletes have a personal duty to ensure that prohibited substances do not enter their bodies. Articles 2.1 and 2.2. Although this case concerns the sanction to be imposed, and not whether an anti-doping rule has been committed, the principle still stands. Athletes must bear the consequences of their actions. The issue which must be addressed in applying Article 10.6.2 relates to Respondent’s degree of fault in committing the anti-doping rule violations. It does stand solely on Respondent’s degree of fault in selecting and supervising his coach. Respondent cannot shift the assessment of his fault in taking a supplement (DHEA) containing an anabolic agent of exogenous origin to his coach.
72. Second, the Arbitrator does not find the two cases cited by Respondent to be controlling in this case. *Al Nahyan* is an equestrian case where the horse tested positive, and the hearing panel was attempting to determine the sanction to be applied to the rider who asserted and provided evidence that he had no practicable responsibility for, or knowledge or control of what was given to the horse. Equestrian cases pose different issues and in the Arbitrator’s view *Al Nahyan* does not stand for the proposition that the delegation doctrine should be utilized in non-equestrian cases. *Sharapova* seems to be a one-off case in which the parties expressly agreed to follow the delegation approach. There was no such agreement here. Further, the Arbitrator knows of no other anti-doping case that has followed *Sharapova* and utilized the delegation doctrine in determining an appropriate sanction under Article 10.6.2, and no such case has been provided by Respondent.
73. Third, the Arbitrator is guided by the AAA panel’s decision in *Dwyer*. There, Dwyer advocated for the use of the delegation doctrine in determining his degree of fault and accordingly the length of the sanction to be imposed upon him. After considering the

positions of the parties, the AAA panel rejected use of the delegation doctrine. The Arbitrator finds no reason to deviate from the AAA panel's determination.

74. Respondent states that if the Arbitrator determines not to apply the delegation doctrine to this case, then alternatively his degree of fault should be assessed under the framework outlined in *Cilic*. Claimant, who opposed use of the delegation doctrine, agrees. Accordingly, the Arbitrator turns to an analysis of Respondent's fault under *Cilic*.

D. Cilic Analysis

75. *Cilic* is the seminal case on determining an athlete's "degree of fault" pursuant to Article 10.6.2. In *Cilic* the CAS panel recognized three degrees of fault: considerable, normal, and light. *Id.* ¶ 69. For cases involving non-specified substances like DHEA, the three corresponding ranges are: 20-24 months (considerable fault), 16-20 months (normal fault) and 12-16 months (light fault). *Johaug* ¶ 208.
76. Both Parties agree that Respondent's "degree of fault" determines the appropriate sanction within the 24-12-month range.
77. In addition to relevant information set out in the factual summary referenced earlier in this Award, the following testimony was submitted by the Parties relating to Respondent's degree of fault.
78. Deborah Jackson, Respondent's mother testified as follows:
- a. Respondent's coach, Jamaal Daniels, started coaching Respondent in 2015, when Respondent was 15 years old. Daniels was chosen as a coach because he had been an athlete himself, he was respected and he coached at a prestigious prep school.
 - b. Daniels became a father figure to Respondent. Daniels gave Respondent rides to and from practices. During these rides Respondent and Daniels would talk. Respondent and Daniels developed a close relationship and Daniels became a father figure to Respondent. Daniels joined the Jackson family's church and became incorporated into the Jackson family.
 - c. Daniels started giving Respondent a variety of supplements in early 2016. Respondent also entrusted his nutritional and training program to Daniels.
 - d. Respondent is compliant and does what he is told.
 - e. Respondent was tested many times. On these occasions Daniels would tell Ms. Jackson not to worry, because any substance provided by Daniels to Respondent was safe. Daniels assured Ms. Jackson that any substances he gave to Respondent would not contain prohibited substances.

- f. Because of COVID-19 no visitors were allowed at the U.S. Paralympics Track & Field Trials. However, Ms. Jackson was able to attend the Trials as a volunteer, allowing her to see Respondent.
- g. On June 17, 2021, the day before Respondent's long jump and 100-meter events, Ms. Jackson was present when Daniels told Respondent to take two pills from a green bottle with a yellow top. Daniels told Ms. Jackson that she should not worry about the pills because they were perfectly safe. Daniels indicated that the pills were for muscle recovery. Ms. Jackson did not ask Daniels what the pills were. She didn't look up the pills on the internet. She only asked Daniels if the pills were safe. Ms. Jackson indicated that Respondent did not take the pills on June 17, 2021. Ms. Jackson didn't figure out until July 8, 2021, when Respondent received notice of his positive test, that Daniels had given, and Respondent had taken, pills from the green bottle with a yellow top.

79. Respondent testified as follows:

- a. Respondent was around 15 when he met Daniels. Respondent liked Daniels because he was not too old, he was an athlete, he was knowledgeable, he had coaching credentials and he had a good record. Daniels seemed like the right fit.
- b. Daniels was more than a coach; he became like a father. Daniels picked Respondent up at school and drove him to practices.
- c. Respondent was placed in the Registered Testing Pool and started submitting whereabouts information in 2015. Respondent has been tested many times.
- d. Respondent received anti-doping education tutorials on multiple occasions, but at least once a year. As part of these tutorials he was advised of the website supplement 411.org for information on supplements, including their ingredients. Respondent was also made aware of the Global DRO (Drug Reference Online) app.
- e. Respondent first started using supplements when Daniels began training him. Daniels also provided Respondent information on nutrition. At first Respondent would do his own research to make sure the supplements were safe by following USADA guidelines. He would look up the supplements on the internet or utilize Global DRO app. However, as he came to trust Daniels, he became more relaxed over the years and did not continue to do his own research. Respondent admits that if he had looked up DHEA on Global DRO it would have shown that it contained prohibited substances.
- f. Daniels told Respondent that everything he took would be an approved substance. Respondent had regular conversations with Daniels about this. Daniels assured Respondent that Daniels would check the supplements to make sure they were safe.
- g. Although Respondent assumed Daniels to be knowledgeable about anti-doping policies, Respondent did not know if Daniels had ever been in the Registered Testing Pool, had ever been personally tested or had ever taken an anti-doping education tutorial.

- h. On June 17, 2021, the day before Respondent was to compete at the U.S. Paralympics Track & Field Trials, when Daniels suggested that Respondent take two pills, Respondent knew that his mother had asked if the pills were safe. At that time Respondent didn't do anything further to ascertain what the pills were.
- i. On June 18, 2021, the day Respondent competed at the Trials, Daniels gave Respondent two pills. Daniels told Respondent that the pills were for muscle recovery. Respondent did not ask what the pills were or where they came from. Respondent didn't ask about the pills because he trusted Daniels. Respondent stated that Daniels had given him pills to take before, so this was not new for Respondent.
- j. Prior to Respondent's 100-meter race, Respondent had on his sprinting blade. However, Daniels told Respondent to use his long jump blade in the 100-meter race. Respondent had never used his long jump blade in a sprint race, but he did not question Daniels, and thus ran the 100-meter race in his long-jump blade. Respondent trusted his coach and did what he was told. In hindsight, Respondent felt that his use of his long jump blade in the sprint event was the reason for his poor performance in the 100-meter event.
- k. Respondent did not list that he had taken DHEA on his doping control form when he was tested on June 18, 2021. He didn't declare it because he didn't know what the two pills he had taken were.

80. Stan Patterson testified as follows:

- a. Respondent is loyal and does what he is told. He follows the supervision given to him.
- b. Wearing the wrong prosthetic device was horrible advice. Respondent followed the advice of Daniels because Daniels said that was what Respondent should do.

81. Tammy Hanson testified as follows:

- a. Respondent has been in the Registered Testing Pool intermittently since 2015 and continuously since April 1, 2020.
- b. Respondent has taken an anti-doping education tutorial at least once a year during the period of his inclusion in the Registered Testing Pool.
- c. The anti-doping education tutorials instruct athletes that before they take a supplement they should check to determine if the supplement contains a prohibited substance.

82. To determine in which category a case falls (considerable fault, normal fault or light fault), an arbitration tribunal should analyze both the objective and subjective fault of the athlete. The objective standard should be used to move an athlete between the three categories, and the subjective element may be used to move an athlete up and down within the category. *Cilic ¶¶ 71-73.*

83. The objective standard of fault “describes what standard of care could have been expected from a reasonable person in the athlete’s situation.” *Id.* ¶ 71

84. In *Cilic* the CAS panel described the highest standard of care required, what steps should be taken, by an athlete who has ingested a supplement containing a prohibited substance:

(i) read[ing] the label of the product used (or otherwise ascertain[ing] the ingredients), (ii) cross-check[ing] all the ingredients on the label with the list of prohibited substances, (iii) mak[ing] an internet search of the product, (iv) ensur[ing] the product is reliably sourced and (v) consult[ing] appropriate experts in these matters and instruct[ing] them diligently before consuming the product.

Id. ¶ 74.

85. The CAS panel in *Cilic* further stated:

However, an athlete cannot be reasonably expected to follow all of the above steps in every and all circumstances. Instead, these steps can only be regarded as reasonable in certain circumstances:

- a. For substances that are prohibited at all times (both in and out-of-competition), the above steps are appropriate, because these products are particularly likely to distort competition As a result, an athlete must be particularly diligent and, thus, the full scale of duty of care designed to prevent an athlete from ingesting these substances must apply.

Id. ¶ 75.

86. Additionally, the CAS panel in *Cilic* commented that “in theory, almost all anti-doping rule violations related to the taking of a product containing a prohibited substance could be prevented.” *Cilic* ¶ 74.

87. The subjective standard of fault “describes what could have been expected from that particular athlete, in light of his personal capabilities.” *Cilic* ¶ 71.

88. In *Cilic* the CAS panel indicated that in a subjective fault inquiry, where within a category (considerable, normal or light) an athlete’s fault lies, the following non-exhaustive factors include:

- a. An athlete's youth and/or experience.
- b. Language or environmental problems encountered by the athlete.
- c. The extent of anti-doping education received by the athlete (or the extent of anti-doping education that was reasonably accessible by the athlete).
- d. Any other "personal impairments" such as those suffered by:
 - (i.) An athlete who has taken a product over a long period of time without incident. That athlete may not apply the objective standard of care which would be required or that the athlete would apply if taking the product for the first time.
 - (ii.) An athlete who has previously checked the product's ingredients.
 - (iii.) An athlete who is suffering from a high degree of stress.
 - (iv.) An athlete whose level of awareness has been reduced by a careless or understandable mistake.

Id. ¶¶ 76(a)-(d).

- 89. Respondent asserts that in analyzing his degree of fault under the objective standard, the following should be considered:
 - a. Respondent repeatedly told his coach to make sure that any supplements that were given to him were free from banned substances.
 - b. Respondent tried to ascertain whether the supplement provided to him by his coach would be safe for him to take by asking that question of his coach.
 - c. Respondent never saw the bottle, but there was nothing from the appearance of the supplement itself or his coach's description of the supplement that would raise any red flags.
- 90. Respondent also submits that since he did not know what he had taken (what his coach had given to him) it is not reasonable to impose all of the objective steps outlined in *Cilic* on him. Respondent states that his capacity to comply with his objective duty was reduced, because how could he read the bottle label, check the ingredients or make an internet search if he didn't know what he had taken.
- 91. Based on an assessment of the objective factors surrounding his taking of the supplement, Respondent submits that his degree of fault falls in the "light" category, and therefore the sanction range is 12 to 16 months.
- 92. Turning to the subjective factors, Respondent asserts that in determining where within the "light" category of fault his sanction should fall, the following should be considered:
 - a. Respondent has long been a rule follower, and has done what he was told, thus he felt the need to follow the advice of his coach.

- b. Respondent who was 21 years old at the time of his anti-doping rule violation is a relatively young athlete.
 - c. Respondent had received supplements from his coach over a long period of time without incident. After having numerous discussions with his coach on the subject, Respondent did not apply the same standard of care that would be required if this were the first time that his coach had given him a nutritional supplement to take.
 - d. Because of the role of his coach, Respondent's level of awareness was reduced by a careless, yet understandable mistake.
 - e. Respondent's mother was present when the pills were first offered to him and he knew that she had asked Respondent's coach about the pills.
93. Based on an assessment of the subjective factors Respondent submits that within the "light" category of fault, his sanction should fall at the lowest end of the sanction range.
94. Respondent also cites the below cases to support his analysis of fault under the objective and subjective factors.
95. In *USADA v. Rivera*, AAA No. 01-16-0000-6096 (2016) Respondent points out that the AAA panel reduced the athlete's sanction to 12 months from a possible 24 months where the athlete took a pill from her grandmother that was actually Percocet, but that she believed to be acetaminophen.
96. Citing *USADA v. Klineman*, AAA No. 77 190 00462 13 (2013), Respondent notes that the AAA panel reduced the athlete's sanction to 12.5 months (the maximum allowed) from a possible 4 years where the athlete's mother inadvertently added her own medication to the athlete's pill organizer. Respondent states that in its finding, the panel explained, "While her mother made a mistake that was clearly completely unintentional and could have been rectified by using a little more care in reading the bottles as she was filling the vitamin organizer, it simply is not the requirement that members of an athlete's entourage must [be] completely free of mistakes for an athlete to qualify for a reduction in penalty." *Id.* ¶ 10.17
97. Referring to *Johaug*, Respondent states that where the athlete used a product that contained clostebol (an anabolic agent) to treat a severe sunburn on her lips under the care of her doctor, the CAS panel placed her level of fault in the moderate (normal) range and imposed a sanction of 18 months. Respondent points out that the panel reached this assessment even though the product disclosed clostebol as a listed ingredient and contained a doping warning on the side of the package. *Id.* ¶ 165. Respondent further points out that the panel noted that the athlete's ingestion of clostebol was the result of inadvertence, that there was no intention to cheat or gain any competitive advantage, and that the athlete acted upon the advice of a medical doctor. *Id.* ¶¶ 206-207.

98. Respondent concludes that based on both objective and subjective factors, and assessing his fault in view of the totality of the circumstances of his case, that his sanction should be at the lowest end of the “light” category.
99. Claimant asserts that in analyzing Respondent’s degree of fault under the objective standard, the following should be considered:
 - a. Respondent did not read the label of the product. Respondent did not even know what he took at the time he took it.
 - b. Respondent did not search the internet for the product, cross-check DHEA against the WADA prohibited list, or utilize the Global DRO app.
 - c. Respondent performed no diligence to ensure the DHEA was reliably sourced.
 - d. Respondent consulted no experts prior to taking DHEA. Respondent’s coach was not an expert, and even if he was, Respondent did not provide diligent instruction to his coach by merely relying on his mother’s inquiry as to whether the pills were safe. Further, merely relying on the assurances of Respondent’s coach that any substance Respondent was given would not contain prohibited substances is neither instructive nor supervisory.
100. Claimant contends that because Respondent performed none of the five enumerated steps within the scope of his duty of care, Respondent falls into the “considerable” fault category, and therefore the sanction range is 20 to 24 months.
101. In assessing where within the “considerable” category of fault Respondent’s sanction should fall, Claimant points to the following negative factors:
 - a. Respondent has been competing both domestically and internationally for some time.
 - b. Respondent did not suffer from any language or environmental problems.
 - c. Respondent has been in the Registered Testing Pool intermittently since 2015 and continuously since April 2020.
 - d. Respondent has taken numerous anti-doping education tutorials. These tutorials warned against taking supplements without checking them for prohibited substances.
 - e. Respondent did not declare DHEA on his Doping Control Form, as he should have done and should have known to do from his previous tests and from the anti-doping education he received.
 - f. Respondent had not taken DHEA over a long period of time without incident.
 - g. Respondent had not previously checked DHEA’s ingredients.
 - h. Respondent was not suffering from unusually high stress.

102. However, Claimant acknowledges that the following factors are in Respondent's favor:
- a. Respondent has had a longstanding relationship with his coach, who Respondent trusted.
 - b. Respondent's coach had provided supplements to Respondent since 2016.
 - c. Respondent has no prior history of positive tests.
103. Based on an assessment of the subjective factors, Claimant submits that within the "considerable" category of fault, Respondent's his sanction should fall in the middle of the sanction range.
104. Claimant also refers to the below case to support his analysis of fault under the objective and subjective factors and asserts that the cases cited by Respondent are distinguishable.
105. Claimant cites *USADA v. Baily*, CAS/20/2017A/5320 (2018) as an analogous case. Baily was an elite-level bobsled athlete who had been in the Registered Testing Pool for seven years. Baily tested positive for dimethylbutylamine, a prohibited stimulant that was contained in a supplement taken by Baily. Claimant points out that when an appeal was made to CAS concerning Baily's period of ineligibility, the CAS panel found that Baily "wholly failed in his duty of care to prevent the ingestion of a prohibited substance." *Id.* ¶ 98. The panel stated:
- [t]o excuse Mr. Bailey's failure to take the most basic step of looking at the supplement container without considering the possible consequences or risks, based on the fact that he was with "similarly situated athletes" . . . is to ignore an athlete's primary and personal responsibility to ensure that no prohibited substances enter his body. The evidence is that Mr. Bailey exercised no degree of care whatsoever, as he expressly admitted As such, the Panel finds that Mr. Bailey's conduct was a marked departure from the expected standard of behaviour of an athlete of his age and experience.
- Id.* ¶ 100. The CAS panel concluded that Bailey's fault level was "significant" and fell "well below the standard of care expected of such an Athlete." *Id.* ¶¶ 111-12. Baily was sanctioned with a two-year period of ineligibility.
106. In distinguishing *Rivera*, Claimant first states that unlike Respondent's case here, Rivera had taken acetaminophen many times before and the appearance of the Percocet (oxycodone) pill that she was given by her grandmother did not cause Rivera to believe it was anything other than the acetaminophen. Second, Percocet (oxycodone) is not prohibited out of competition and Rivera took it out of competition. Third, the CAS panel found that "[n]o sporting advantage was sought by [Rivera] and none was obtained." *Id.* ¶ 47. In comparing Rivera's circumstances with those of Respondent, Claimant states that

DHEA, which was taken by Respondent, is an anabolic agent prohibited at all times, was taken by Respondent during the U.S. Paralympics Track & Field Trials and had the potential to be performance-enhancing.

107. As to *Klineman*, Claimant points to the fact that Klineman's mother inadvertently placed one of her Dehydroepiandrosterone pills into her daughter's pill organizer, which looked the same as the mother's pill organizer. Since the Dehydroepiandrosterone pill and the non-prohibited iron pill that Klineman was taking looked nearly identical, and Klineman took the pill from her own pill organizer, Klineman did not realize that she was taking the Dehydroepiandrosterone pill. Further, Claimant states that Klineman did due diligence on her supplements in consultation with her national team nutritionist. The AAA panel noted that Klineman "was not blindly or casually taking vitamin supplements without inspecting their provenance and purity." *Id.* ¶ 1.2. Claimant states that in contrast, Respondent had no idea what pills his coach gave him or whether they were safe to take. Claimant states that Respondent made no inquiries of his coach about the two DHEA pills he took whatsoever.
108. Claimant concludes that based on both objective and subjective factors, and assessing Respondent's fault in view of the particular facts relating to his case, Respondent's sanction should be in the middle of the of the "considerable" category, and warrants a 22-month sanction.
109. The Arbitrator in looking at the objective factors to assess the level of fault in relation to Respondent's duty of care is not convinced that those factors listed and deemed to be favorable by Respondent are of much assistance.
110. Further, Respondent's argument that he should be excused from performing a number of the objective steps outlined in *Cilic* because he did not know what he took, seems to be an attempt to sidestep the real problem with Respondent's actions, that he took an unknown substance without making any inquiry as to what it was.
111. The Arbitrator finds the following factors to be against Respondent.
 - a. Respondent carelessly took two pills handed to him by his coach on the day of competition. Respondent did not know and did not ask what the pills were. He just took them without question.
 - b. Respondent performed no due diligence. He did not read the bottle label of the supplement he took or attempt to ascertain what ingredients were contained in the pills. He asked no questions as to what kind of pills he was taking, what was in them or even if the pills were safe. Respondent had a personal and primary responsibility to know what he was taking so as to prevent prohibited substances from entering his body. Relying solely and completely on his coach to ensure that the pills contained no banned substances is not adequate.

- c. Respondent's coach is not an expert. Indeed, there is no evidence that Respondent's coach has ever personally been tested, been in a Registered Testing Pool or taken anti-doping education tutorials. Even if Respondent's coach were an expert, telling him to make sure that any supplements given to Respondent were free of banned substances is not diligent instruction. More would be required, including research into the product being taken, what was in the product, did it contain prohibited substances, who manufactured the product, and why was the product needed.
112. Accordingly, after considering the objective factors and arguments submission and case materials provided by the Parties, the Arbitrator determines that Respondent's degree of fault is in the "considerable" category.
 113. Turning next to the subjective factors to be considered, the Arbitrator finds the following to be in Respondent's favor:
 - a. Respondent is a relatively young athlete, being only 21 years old at the time of his anti-doping rule violation.
 - b. Although Respondent has been competing for some time, in both domestic and international competitions, during much of his athletic career he was a teenager. During much of that time he relied on his mother to assist him in following anti-doping requirements, including submitting whereabouts information. Respondent's experience does not rise to the level of someone who is older and has competed as an elite athlete for a number of years.
 - c. Respondent has had a relationship with his coach for approximately six years; since he was 15 years old. This relationship was more than just that of athlete and coach but developed into a close and trusting relationship where Respondent considered his coach to be, in many ways, like a father. Respondent had no reason to doubt or suspect that his coach would give him anything that was unsafe to take.
 - d. Respondent appears to do what he is told by those he trusts, even though asking questions would be to his benefit. This is evidenced by his taking of the pills provided by his coach without question and his use of his long-jump blade in the 100-meter race because he was told to do so by his coach.
 - e. Respondent's coach provided supplements to Respondent since 2016. Because of Respondent's numerous discussions with his coach about supplements, his use of them and their safety, and the number of times he had taken supplements from his coach without incident, the same standard of care was not required of Respondent as would be required if this were the first time he had taken a supplement provided by his coach.
 - f. At first Respondent checked supplements given to him by his coach by doing his own research, looking up the supplements on the internet or utilizing the Global DRO app. However, as his trust and reliance on his coach grew, he became more relaxed about doing this. Although taking the pills provided by his coach without checking them was

a mistake, it can be attributed in part to Respondent's lessened awareness of the risk associated with putting so much trust in his coach.

114. The Arbitrator finds the following subjective factors to be against Respondent:
- a. The evidence presented did not disclose that Respondent suffered from any language or environmental problems.
 - b. Respondent has taken many anti-doping tutorials, all of which warned of the dangers of taking supplements without first checking them for prohibited substances
 - c. Respondent did not declare DHEA on his Doping Control Form. And even if he did not know that he had taken DHEA, he could have stated on his Doping Control Form that he recently took two pills of unknown substance given to him by his coach.
 - d. Respondent was not suffering from unusually high stress. Although, granted, competing at a trials event for the Paralympic Games can be stressful.

115. The first issue the Arbitrator must consider is whether these subjective factors are so exceptional that they move Respondent into a different fault category. *Cilic* states:

Of course, in exceptional cases it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.

Id. ¶ 74.

116. When considering the subjective factors, the Arbitrator does not find them to be so exceptional so as to change Respondent's level of fault. Thus, Respondent's level of fault remains in the "considerable" category.
117. The second issue then is where in the "considerable" category does Respondent's sanction fall.
118. Balancing all of the subjective factors, both favorable and unfavorable, arguments and submissions, and after reviewing the cases provided by the Parties, the Arbitrator finds that Respondent's fault falls at the lowest end of the "considerable" category. Accordingly, within the 24 to 20 month range, the Arbitrator imposes a period of ineligibility of 20 months.

E. Substantial Assistance

119. Respondent contends that pursuant to Article 10.7.1, he is entitled to a reduction of his period of ineligibility based on the substantial assistance he provided to Claimant, which

resulted in Respondent's coach being charged with and admitting to an anti-doping rule violation. Claimant disagrees, responding that the Arbitrator does not have the authority to award a substantial assistance reduction.

120. Article 10.7.1.1 states in part:

[a]n Anti-Doping Organization with Results Management responsibility for an antidoping rule violation may, prior to an appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the Consequences (other than Disqualification and mandatory Public Disclosure) imposed in an individual case where the an Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body

121. Respondent in his brief and through testimony details the assistance he provided to Claimant and how this assistance meets the requirements of Article 10.7.1 for a reduction of Respondent's period of ineligibility.

122. Respondent also asserts that the Arbitrator has the authority to grant a reduction of Respondent's period of ineligibility under Article 10.7.1. Respondent bases his position on four grounds. First, Respondent points to R-38a of the Arbitration Procedures, which states:

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the World Anti-Doping Code, International Federation Rules, the USADA Protocol or the USOPC National Anti-Doping Policy as applicable.

Respondent contends that substantial assistance, as provided for in Article 10.7.1, is within the scope of the WAD Code. Therefore, if the Arbitrator deems that reduction under substantial assistance is just and equitable, the Arbitrator has authority to grant it.

123. Second, Respondent asserts that Article 10.7.1 does not grant "exclusive authority" to an anti-doping organization to determine substantial assistance. Respondent states that although Article 10.7.1 provides that an anti-doping organization may reduce a sanction for substantial assistance, it does not explicitly say that an anti-doping organization only has this authority. Respondent submits that this stands in stark contrast to other provisions of the WAD Code and USADA Protocol where, if exclusive authority is granted, the WAD Code and USADA Protocol say so.

124. Third, although Respondent admits that although Article 10.7.1 does not explicitly include first instance arbitration tribunals in its provision as to who may reduce a suspension based

on substantial assistance, he argues that case law makes clear that such authority is implied. In support of his position, Respondent cites on four CAS cases that dealt with the issue as to whether substantial assistance was properly given or honored by an anti-doping organization. *Al-Suweidi v WADA*, CAS 2017/A/5000 (2017); *WADA & FIFA v. CFA, C. Marques et al.*, CAS 2009/A/1817 (2009); *FIFA v. CFA & Eranosian* CAS 2009/A/1844 (2009); and *IAAF v. RFEA & Fernández*, CAS 2011/A/2678 (2011). Additionally, Respondent cites *ADKA v. Korir*, ADKA Case No. 29 of 2018 (2018). Respondent submits that in *Korir* the athlete's suspension was reduced by the first instance tribunal upon a finding of substantial assistance. *Id.* ¶ 8.1. Finally, Respondent refers to *USADA v. Hay*, AAA No. 01-17-0002-4676 (2017) in which Hay requested substantial assistance for information she provided to the U.S. Center for SafeSport.

125. Fourth, Respondent argues that allowing an arbitration tribunal of first instance to reduce a sanction based on substantial assistance only makes common sense. Respondent states that if a CAS panel on appeal has authority to review a substantial assistance reduction given by an anti-doping organization, then a first instance arbitration tribunal should have the authority to consider the issue and reduce a sanction based on the evidence before it.
126. Claimant responds that the Arbitrator does not have the authority under Article 10.7.1 to reduce a period of ineligibility based on substantial assistance. First, Claimant responds that there is no textual basis in Article 10.7.1 for the proposition that first instance arbitration tribunals may rule on substantial assistance. Claimant states that to accept Respondent's argument would contravene the plain language of Article 10.7.1. Claimant asserts that the WAD Code empowers anti-doping organizations with results management responsibility, specifically USADA not the Arbitrator, to suspend part of an athlete's sanction where the athlete has provided substantial assistance.
127. Second, Claimant contends that the cases on which Respondent relies are not controlling. Respondent points out that the CAS cases cited by Respondent are appeals in which an athlete challenges a substantial assistance decision made by a national anti-doping organization, International Federation, and/or WADA. Claimant states that although Article 13.2 allows CAS to hear appeals, there is no corresponding WAD Code provision authorizing substantial assistance decisions by first-instance arbitration tribunals. As to *Korir*, Claimant explains that the athlete raised the issue of substantial assistance under Article 10.6 during the hearing. The Kenyan panel then requested input from the ADKA. The ADKA merely directed the panel to proceed "with giving a decision based on the hearing and the substantial assistance provided by Respondent Athlete." ¶¶ 7.6, 7.8. As Claimant points out, no authority was provided by the Kenyan panel allowing it to provide substantial assistance; rather it appears that the panel did so solely on the ADKA's consent to the athlete's request. Finally, Claimant notes that in *Hay* the AAA panel expressly declined to rule on the substantial assistance issue. *Id.* ¶ 123.

128. Third, Claimant contends that Respondent's reliance on R-38a of the Arbitration Procedures is an incorrect interpretation of what R-38a says. Claimant states that R-38a does not give the Arbitrator authority to grant a reduction of sanction based on substantial assistance under some scope argument, when Article 10.7.1 specifically, and only, grants that authority to an anti-doping organization.
129. Claimant also indicates that it has not yet taken a position on whether Respondent has provided substantial assistance under Article 10.7.1. Claimant states that it will do so after the Arbitrator has issued the award in this matter determining the period of Respondent's ineligibility. Claimant states that this is yet another reason the Arbitrator should decline to rule on substantial assistance in this proceeding.
130. After considering the Parties' arguments and submissions, and a review of the WAD Code and cases cited, the Arbitrator does not find merit in Respondent's position that Article 10.7.1 provides the Arbitrator with the authority to reduce Respondent's period of ineligibility due to substantial assistance.
131. First, the language of Article 10.7.1 is clear and unambiguous that this authority lies with an anti-doping organization with results management responsibility, in this case Claimant. If the language of a statute is clear and unambiguous, it must be applied according to its terms. Merely because the language of Article 10.7.1 does not say that anti-doping organizations have "exclusive authority," the authority to provide a reduction of a sanction is not given to a first instance arbitration tribunal. Even Respondent concedes that Article 10.7.1 does not expressly authorize the Arbitrator to reduce a suspension based on substantial assistance, but that such authority would have to be implied.
132. Second, Respondent's reliance on R-38a of the Arbitration Procedures is unconvincing. Although R-38a states that an arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the "scope" of the WAD Code, the scope of Article 10.7.1 pertains to anti-doping organizations and their authority to providing sanction reductions based on substantial assistance. Merely because Article 10.7.1 provides for substantial assistance, R-38a does not give the Arbitrator the authority to expand his authority where none is given.
133. Third, the Arbitrator does not find the cases cited by Respondent to be controlling. The CAS cases Respondent relies upon are all appeals. The Arbitrator does not find that those cases stand for the proposition that a first instance tribunal has the authority to decide, in place of an anti-doping organization, whether substantial assistance is appropriate. Additionally, the Arbitrator does not give much credence to *Korir* and does not consider it controlling here. In *Korir* it appears the Kenyan panel proceeded with ADKA's concurrence. The Kenyan panel did not consider whether it had the authority under Article 10.7.1 to lessen an athlete's period of ineligibility based on substantial assistance. Also,

in *Hay* the AAA panel declined to provide a reduction of the sanction based on substantial assistance.

134. Fourth, the Arbitrator is not convinced by Respondent's common-sense argument. There are valid reasons for allowing CAS panels to hear appeals concerning substantial assistance and the WAD Code specifically allows this. However, those reasons do not necessarily apply to arbitration tribunals of first instance.
135. Fifth, allowing an arbitration tribunal of first instance to involve itself in granting reductions of a period of ineligibility for substantial assistance places the tribunal in the position of the anti-doping organization. That is not the function or role of a first instance arbitration tribunal. An anti-doping organization is in a unique position. It receives and evaluates information concerning a possible anti-doping rule violation from many sources and is in a position to determine how particular information provided from an individual seeking a reduction of his or her sanction will affect or be of assistance in charging and resolving an anti-doping violation against another person. The anti-doping organization can also compare the assistance given by an individual seeking a reduction of his or her sanction with other individuals who have provided similar assistance. This allows for a uniform and consistent approach in reducing sanctions. These functions and the decision as to a reduction of a sanction under Article 10.7.1 are appropriately carried out by, and should be left to, the anti-doping organization responsible for investigating, bringing and resolving anti-doping cases.
136. Accordingly, the Arbitrator rules that he does not have the authority under Article 10.7.1 to provide a reduction of Respondent's sanction because of substantial assistance as Respondent requests.
137. Because of the Arbitrator's finding above, the Arbitrator does not consider it necessary to delve into whether or not Respondent's actions are worthy of a reduction of ineligibility based on substantial assistance.

F. Credit for Provisional Suspension and Sanction Start Date

138. Article 10.13 states in part that "the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."
139. Further, Article 10.13.2.1 states that "[if] a Provisional Suspension is respected by the Athlete or other Person then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed."

140. Respondent was notified of his provisional suspension by Claimant on July 8, 2021.
141. Accordingly, both Parties agree that the start date for Respondent's period of ineligibility is July 8, 2021, the date Claimant imposed the provisional suspension.

G. Disqualification of Results

142. Article 10.10 provides that:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

143. Respondent's positive sample was collected on June 18, 2021, and his provisional suspension was imposed on July 8, 2021.
144. Accordingly, both Parties agree that Respondent's competitive results from the date of his positive test, June 18, 2021, through the date of his provisional suspension, on July 8, 2021, if any, are to be disqualified, and any medals, points or prizes earned during that period shall be forfeited.


VII. FINDINGS AND DECISION

The Arbitrator therefore rules as follows:

- A. Respondent has committed anti-doping rule violations under Articles 2.1 and 2.2 of the WAD Code for Presence and Use of a prohibited substance.
- B. Respondent did not intentionally violate the anti-doping rules under Article 10.2.3 of the WAD Code, and therefore the default or starting period of ineligibility for the anti-doping rule violation is two years, which is subject to further possible reduction.
- C. Respondent has sustained his burden of proof under Article 10.6.2 of the WAD Code to qualify for a reduction in the length of his sanction. Therefore, Respondent's period of ineligibility is reduced from two years to 20 months.

- D. The start date of Respondent's period of ineligibility is the date of his provisional suspension, July 8, 2021, and the period of ineligibility expires on March 7, 2023.
- E. Respondent's competitive results from the date of his positive test, June 18, 2021, through the date of his provisional suspension, on July 8, 2021, if any, are to be disqualified, and any medals, points or prizes earned during that period shall be forfeited.
- F. The Parties shall bear their own attorneys' fees and costs associated with this Arbitration.
- G. The administrative fees of the American Arbitration Association and the compensation and expenses of the Arbitrator shall be borne by the United States Olympic & Paralympic Committee.
- H. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: October 8, 2021



Gary L. Johansen, Arbitrator