AMERICAN ARBITRATION ASSOCIATION
Arbitration Tribunal

In the Matter of the Arbitration between

United States Anti-Doping Agency, Claimant
and
Deeja Youngquist, Respondent

Re: 30 190 00800 04

AWARD OF ARBITRATORS

We, THE UNDERSIGNED ARBITRATORS, having been designated by the above named parties, and having been duly sworn, and oral hearings having been waived in accordance with the agreement of the parties, and having fully reviewed and considered the written documents submitted to us, do hereby, FIND AND AWARD, as follows:

1. Introduction

1.1 Claimant, United States Anti-Doping Agency ("USADA") is the independent agency charged with the responsibility for testing and prosecution of positive test results relating to Olympic and other elite athletes.

1.2 Respondent, Deeja Youngquist ("Youngquist") is an elite-level distance runner who provided an out-of-competition urine sample that tested positive for recombinant human Erythropoietin ("r-EPO").

2. Applicable Rules

2.1 Under the USADA Protocol for Olympic Movement Testing, the agency enforces the doping rules of the international federation for the sport of track and field, the IAAF. Rule 32 provides that the presence of a prohibited substance in an athlete's bodily tissues or fluids constitutes an offence.

2.2 The IAAF List of Prohibited Substances includes EPO, and chemically related or similar compounds, within the class of Peptide Hormones.

2.3 The USADA Protocol includes an Annex D, the Supplementary Procedures for Arbitration governing this matter, and an Annex F, which sets forth certain precatory timelines.

3. Background and Facts

3.1 The parties entered into a stipulation of uncontested facts and issues, in relevant part included in the findings set forth below. While reserving certain rights, Youngquist did not contest the validity of the laboratory reports showing that she had used r-EPO. Therefore, the sole issue left for this panel was to decide the starting date for Youngquist's suspension.

3.2 Youngquist provided the sample on March 16, 2004, and she was notified that her "A" sample was positive on April 12, six days after the Olympic Laboratory at UCLA provided the results to USADA. Her counsel entered his appearance on April 20 and two days thereafter requested a postponement of the "B" sample testing, which took place on May 24. USADA received the "B sample" documents confirming the earlier test results on May 27, and thereafter requested additional materials from the laboratory, but did not send the athlete notice until June 28.

3.3 On July 8, Youngquist made a timely submission to the Anti-Doping Review Board; USADA's charging letter followed on July 19.

3.4 Beginning on April 12, 2004, Youngquist had the opportunity to accept a provisional suspension. She did not do so until December 4, 2004.

3.5 This arbitration was commenced in early August and the parties' arbitrator selections and venue decision were made later that month, during which one of the arbitrators and Youngquist's counsel were in Athens. All three members of the panel had disclosures to make, and California law (applicable as a result of the venue decision) mandated fifteen days for the parties to object or waive. The Association determined that additional disclosures were required, and the process was not completed until mid-October, at which point each member of the tribunal and counsel for both sides were immediately requested to furnish their availability for a preliminary conference. All concerned agreed on November 11 for that proceeding, during which various dates were fixed by consent, including a January hearing. Subsequently, the parties agreed to proceed on the papers, and then to two additional rounds of briefing, the last in response to certain inquiries of the panel. The hearings were declared closed on Febrary 17, 2005, approximately six months after having been initiated.

4. The Parties' Arguments

4.1 Youngquist contends that this panel must follow *USADA* v. *Hellebuyck*, a recent decision involving substantially similar facts. There, the suspension was ordered to begin from the date of the test, rather than from the date of the Award. Although not clearly explained on its face, the Hellebuyck holding appears to rest upon the conclusion that the passage of ten months from test to issuance of Award constitutes an unfair extension of the two year penalty.

4.2 USADA takes the position that Hellebuyck is clearly and unequivocally wrong, and that it ignores the plain language of the applicable rule. USADA also argues that its testing and review were reasonably timely, and that this proceeding clearly fits within the average completion period of prior cases. USADA points to the absence of any prior complaint of delay by the athlete, her agreement to the schedule fixed by the panel, and no demonstration of prejudice to her in light of the availability of a provisional suspension (in effect, a credit against the final penalty) from April 12, 2004.

5. Analysis and Conclusions

5.1 On the central issue in this matter, there can be no dispute. Youngquist has been properly found to be in violation of Rule 32 of the IAAF Competition Rules. As has been noted by panels confronting r-EPO in the past, the USOC laboratory tests applied here are scientifically valid, and this substance cannot be accidentally ingested through contaminated supplements or the like. For this violation, Youngquist is subject to the two-year sanction imposed by the IAAF Rules.

5.2 It is equally clear that exceptional circumstances cannot be part of the calculus in this matter. The exceptional circumstances exception applies only to how the prohibited substance came to be found in the athlete's body, not to the procedural aspects that follow from a test showing that they are there. As described in the rules, and as dictated by common sense, an athlete who tests positive for r-EPO cannot contend that she was unaware of, or simply negligent in, how that happened. This is not a substance found in over-the-counter supplements or that occurs naturally. Youngquist had to know that she was taking a banned substance, or was grossly negligent in not knowing. The argument made in this matter, that certain of the suggested intervals between testing of samples, notice to the athlete and the conclusion of this arbitration add up to a set of circumstances so outside the realm of prior adverse decisions and were to such a large extent outside the control of the athlete, is without foundation in fact or logic. As described in more detail in the following subsection, Youngquist never raised the issue of delay until long after the fact. Even if she had sone so, and if this panel found that to be a compelling argument, the result would have been a reference back to the IAAF's Doping Review Panel, and not an arbitrary adjustment, having no basis in the rules, of the suspension start date.

5.3 That there was not strict adherence to certain of the time guidelines for notice, testing and the conduct of this arbitration is what remains, but this panel can find no basis in the rules for departing from the clear prescription of Rule 40.9 that suspensions are to start from the date of the Award. Youngquist could have elected to accept provisional suspension as early as April 12, approximately one month after her test date. Instead, she chose to compete through mid-June and to start her suspension in December. At no time did she state, directly or indirectly, that she wanted any element of the process to move more rapidly, or that she was suffering any prejudice as a result of prior or ongoing action in this matter. "Delay" did not become an issue until briefing, which took place on an agreed schedule. There were several instances where the intervals suggested by Annex F were exceeded, particularly during and just after the Olympic Games in Athens, and it is to be hoped that those concerned will endeavor to expedite all anti-doping proceedings, in the spirit of Annex F, in future. However, where, as here, (i) the delay is not egregious; (ii) there is no timely request for an improved schedule, or well-founded complaint as to

development as they occur; and (iii) no demonstration of prejudice to the athlete in accepting a provisional suspension, the rules must apply as written.

5.4 USADA acknowledges that Article 10.8 of the Code sets forth a fairness standard that would, under circumstances not here applicable, allow an equitable timing adjustment. However, USADA goes on to emphasize that there is a linkage between delay (which must be of a considerably more substantial nature than that which took place in this matter) and the ability of the athlete, at least those falling within USADA's jurisdiction, to elect a provisional suspension, which is also mentioned in Article 10.8. For example, Article 10.8 might apply when there was a long delay in the laboratory forwarding the initial test results, during which time the athlete was unaware of the alleged violation and could not either accept a provisional suspension or seek to move the matter forward. When there is no prejudice to the athlete, as manifested by consent or the absence of a well-grounded request for an expedited schedule, and the provisional suspension is either not elected or deferred, fairness as defined in Article 10.8 does not provide the panel with a basis for adjusting the prescribed penalty.

6. Decision and Award

6.1 Respondent, Deeja Youngquist, committed a doping violation.

6.2 The minimum suspension for a first offender of two years is imposed, to take effect from December 4, 2004, and all competitive results from March 16,2004 are cancelled.

6.3 The administrative fees and expenses of the American Arbitration Association totaling and the compensation and expenses of the arbitrators shall be borne entirely by Claimant United States Anti-Doping Agency.

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

6.5 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

David W. Rivkin, Arbitrator

Date

Richard K. Jeydel, Chairman

2/27/05
Date

Christopher L. Campbell, Dissenting Arbitrator

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Richard K. Jeydel, Chairman

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Christopher L. Campbell, Dissenting Arbitrator