

American Arbitration Association
Commercial Tribunal

Case # 01-21-0017-1003

United States Anti-Doping Agency
vs.
Taylor Graham

FINAL AWARD

I, the undersigned arbitrator, having been designated in accordance with Protocol for Olympic and Paralympic Movement Testing Annex C Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes, as of January 2021 and having been duly sworn, and having duly heard the proofs and allegations of the Claimant, and the Respondent having appeared after due notice in accordance with the Rules, hereby awards as follow:

Parties:

Respondent Taylor Graham is a 27 year old wheelchair tennis player who was a member of the U.S. Tennis Association (USAT) from June 18, 2014 to June 30, 2020 and from September 29, 2020 to September 30, 2021. At all times included he was subject to Drug testing protocols of Claimant.

Claimant is The United States Anti-doping Agency, the competent body for anti-doping issues in the United States. Claimant was represented at all pertinent hearings by Spencer Crowell.

Factual and Procedural Background

As an elite level athlete who has regularly competed in national and international competition over many years including several appearances in US Open USTA wheelchair championships Respondent has been included in USADA's Clean Athlete Program (CAP) since January 2019. USADA tested Respondent out of competition three times between February 2018 and October 2020.

USADA provided Respondent extensive anti-doping education between 2018 and 2021. Programs provided include 2018 new athlete program tutorial, 2019 Clean Athlete program tutorial, 2020 Returning Athlete Clean Athlete tutorial; and 2021 Returning Clean Athlete program tutorial. These tutorials included information on returning from sport and obligations to submit to sample collection. An athlete newsletter in April; 2021 included a discussion of the requirement and procedures for an athlete intending to retire. Such requirements and procedures must be followed in order for an application for retirement to be considered and granted.

On September 8, 2021, USADA selected Respondent for out-of-competition testing. Drug Control Officer (DCO) Dennis Perky visited Respondent's primary residential address listed on his required whereabouts list at 5:12pm. He knocked on the door and rang the doorbell with no response to either attempt to contact Respondent. He returned to his vehicle and phoned Respondent at the phone number listed on his whereabouts filing. The call was initiated at 5:42 pm and was answered by Respondent who confirmed that he was the Respondent. DCO Perky identified himself as a DCO and advised that he was at Respondent's whereabouts address and that Respondent had been selected for an out-of-competition test. Respondent said he was at his in-law's home for dinner.

DCO Perky offered to meet Respondent at that home in order to complete the test. Respondent declined the offer to meet DCO Perky stating that he was "no longer on the team" and intended to retire but acknowledged that he had not filed the required paperwork in order to retire. He asked what would happen if he did not complete the test and DCO Perky informed him that he could be subject to a four year suspension and further consequences. Respondent received the information and stated that he would not complete the test.

DCO Perky read the Athlete Refusal Form to Respondent that states: "I am aware that I am violating USADA protocol and other anti-doping rules by refusing to submit to provide urine and or blood samples. I understand I will be subject to a four year suspension and other consequences of an anti-doping rule violation, including public announcement of the facts and circumstances." After reading this admonition, DCO Perky again asked Respondent if he still wished to refuse the test and Respondent confirmed that this was still his position. DCO Perky informed Respondent that he would inform USADA of these facts and ended the call.

On September 16, 2021, USADA sent a letter to Respondent and requested further information regarding his position the he returned as USADA had not ever received any documentation as required as part of the retirement process. Respondent was informed that he had until September 27, 2021 to provide the required documentation and an explanation but he failed to ever respond with the documentation or an explanation of his request for retirement consideration.

On October 15, 2021 USADA formally charged Respondent with an anti-doping-Rule violation (ADVR) for refusing and failing to submit to a sample collection pursuant to Article 2.3 of the World Anti-Doping Code, (The Code). On October 25, 2021, Respondent Contested the charge and requested a hearing.

On October 26, the matter was opened with the American Arbitration Association. Hon. James M. Murphy was appointed as the Arbitrator and a preliminary hearing was held via video conference on December 15, 2021. A scheduling order was prepared and published by the Arbitrator. An evidentiary hearing was set by the order for March 21, 2022 at 9 AM. The scheduled teleconference was held at that time on the date ordered.

Taylor Graham appeared pro se, having been advised by the Arbitrator of his right to have counsel present but asserted that he could not afford to hire an attorney for any appearance

or purpose including writing and filing briefs, witness list or to advise him going forward or for appearance at the evidentiary hearing. He was advised that the Arbitrator would accept a written statement of his position. Spencer Crowell, counsel for USADA agreed to accept the written statement of Respondent.

Respondent provided his official written statement on February 27, 2022. In his written statement, Respondent admitted that he made the decision to refuse the sample collection as requested by DOC Perkey on September 8, 2021 and thus he states that he is 100% guilty and wishes to claim nothing different. He further stated that he doesn't feel that a four year suspension is fair.

USADA was present at the video hearing on March 21, 2022 and represented by Spencer Crowell. USADA asserts that Article 2.3 of the Code states that it is an ADRV to intentionally refuse or to negligently fail to submit a sample to collection without compelling justification. Citing Article 3.1 of the Code, it is USADA's burden to establish that the Respondent committed an ADRV to the comfortable satisfaction of the Arbitrator, bearing in mind the seriousness of the violation: too so, USADA must prove to the Comfortable satisfaction of the arbitrator that (1) Respondent was notified that he was required to provide a sample, (2) that testing of the respondent was authorized under the protocol and (3) that Respondent either intentionally refused or negligently failed to provide a sample. USADA is not required to establish that Respondent had no compelling justification for refusing or negligently failing to submit to sample collection on September 8, 2021. If Claimant establishes the above-reference Elements, it establishes a prima facie case against the Respondent. The burden of proof then shifts to Respondent to establish, by a balance of probabilities that he had a compelling justification for his refusal or failure to submit to the sample collection.

As required by Article 5.4.1 of the World Anti-Doping Agency (WADA) international standard for testing and investigation, (ISTI) DOC Perkey was required to inform Respondent that he was required to undergo a sample collection, the authority user which the sample collection would be conducted, and the type of sample collection and any conditions that need to be adhered to prior to the collection. Factually, DOC Perkey properly notified Respondent as he identified himself as a USADA DOC, that Respondent had been selected for out of competition testing, a process that Respondent had participated in three times prior to September 8, 2021. Further Respondent was advised that his failure to comply could lead to a sanction that could include a four year suspension and a finding of an ADRV.

Respondent advised DOC Perkey that he had intended to retire but had not filed any of the required forms or followed any to the required protocols in order to do so. Since he was a member of USTA since 2014, he remained an active member on September 8, 2021. Since he failed to complete the retirement process USADA was authorized to test. USADA maintains clear rules and procedures for athletes intending to retire. They are found on the USADA website and within the protocols for retirement. An athlete in the Registered Testing Pool (RTP) or (CAP) or who wishes to retire must notify USADA in writing in order for retirement to be effective. Information on retirement requirements and procedures are provided to athletes in educational materials and annual returning athlete tutorials and periodic newsletters, all of which Respondent has regularly received.

Respondent's admissions to DCO Perkey indicated that he had intended to retire but admitted that he did not communicate that to USADA, had not followed up with any requirements and that he knew that even if he appeared ignorant of requirements to retire, ignorance was no defense to a finding of an ADVR or a four year suspension. His actions or lack of compliance with retirement requirements and procedures fail to provide a qualifications for a finding of a Compelling Justification for failing to provide a sample as required. His failure to provide a sample light of warning of consequences by DCO Perkey and Respondent's own experiences show that his decision to refuse the test was intentional or at a minimum, was negligent.

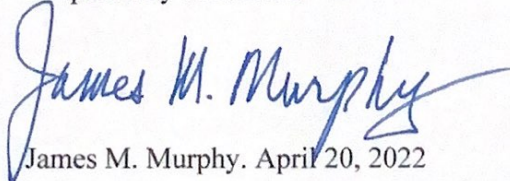
Article 10.3.1 of the Code provides that the period of ineligibility for intentionally refusing to provide a sample or negligently failing to do so shall be Four (4) years which the Arbitrator agrees with USADA is an appropriate sanction since Respondent had no basis to refuse the test no would it excuse his negligent failure to take the test.

As Respondent was provisionally suspended October 15, 2021, the date USADA sent Respondent the charging letter, this date shall be designated as the start date for Respondents period of ineligibility.

Pursuant to Article 10.10, the Arbitrator grants USADA's request that any results obtained by Respondent after September 8, 2021 shall be disqualified.

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

Respectfully submitted.


James M. Murphy. April 20, 2022