

## DECISION IN THE MATTER OF YELENA SLESARENKO (“ATHLETE”)

### 1 FACTUAL BACKGROUND

- 1.1. On 16 July 2016 and 9 December 2016, Prof. Richard McLaren published two reports into allegations of a systemic doping scheme in Russia (the First<sup>1</sup> and Second McLaren Reports<sup>2</sup>, together the “McLaren Reports”). In the McLaren Reports, Prof. McLaren made findings with respect to the scheme and concluded that Russian athletes had been protected over the course of years. In other words, a vast number of positive samples had been officially reported as negative. The three main counter-detection methodologies which were used in Russia, at least between 2011 and 2015, were the so-called (i) Disappearing Positives Methodology (“DPM”)<sup>3</sup>, (ii) the Sample Swapping Methodology<sup>4</sup> and (iii) Washout Testing<sup>5</sup>.
- 1.2. On 30 October 2017, the World Anti-Doping Agency (“WADA”) Intelligence & Investigations Department (“WADA I&I”) secured from a whistleblower a copy of the Laboratory Information Management System (“LIMS”) data of the Moscow Laboratory for the years 2011 to August 2015 (the “2015 LIMS”).
- 1.3. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: “bags”, “samples”, “screening”, “found” (or “scr\_results” prior to 2013), “confirmation”, “MS\_data” (or “Pro\_4” prior to 2013) and “pdf”.

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<sup>1</sup> <https://www.wada-ama.org/en/resources/doping-control-process/mclaren-independent-investigation-report-part-i>

<sup>2</sup> <https://www.wada-ama.org/en/media/news/2016-12/wada-publishes-independent-mclaren-investigation-report-part-ii>

<sup>3</sup> Where the initial testing procedure of a sample revealed a Presumptive Adverse Analytical Finding the athlete would be identified and the Russian Ministry of Sport would decide either to “SAVE” or to “QUARANTINE” the athlete in question. The instruction would typically be sent by email; however, at times, “SAVE” instructions were also known to be given by other means than email, e.g., orally or by text message and certain athletes were automatically protected without the need for any instruction. If the instruction was “SAVE”, the analysis of the sample would stop and the Moscow Laboratory would report the sample as “negative” in ADAMS.

<sup>4</sup> The Sample Swapping Methodology involved the replacing of “dirty” urine with “clean” urine by removing and replacing the cap on sealed B sample bottles. This was facilitated by the establishment and maintenance of a “Clean Urine Bank” at the Moscow Laboratory.

<sup>5</sup> The Washout Technique was developed in order to determine whether the athletes on a doping program were likely to test positive. Even when the samples screened positive, they were automatically reported as negative in ADAMS. See page 23 and 72 of the Second McLaren Report.

- 1.4. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency (RUSADA), WADA required *inter alia* that authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided. Access to the Moscow Laboratory was therefore given to a team of WADA-selected experts, who were allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the “**2019 LIMS**”) as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the “**Analytical Data**”). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.
- 1.5. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular, to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not). WADA I&I also identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA’s retrieval mission in January 2019.<sup>6</sup>
- 1.6. In the present case, the 2015 LIMS data and the Analytical Data show that a number of the Athlete’s samples contained prohibited substances and were not reported as positive as part of the Russian manipulation scheme. More particularly:

1.7. **Moscow Washout Schedules**

- 1.7.1. The Athlete’s name appears on the Moscow Washout Schedules as follows (see e.g. EDP0032):

Slesarenko 18/07		T/E = 0.8, methasterone long-term metabolite 60 000, traces of methenolone
Slesarenko 25/07	parallel representation	T/E = 2.0 (prohormones again?), methasterone long-term metabolite 35 000
Slesarenko 31/07	out-of-competition	methasterone long-term metabolite 10 000

- 1.7.2. Methasterone and metenolone are exogenous anabolic steroids prohibited under S1.1.a of the 2013 WADA Prohibited List.

1.8. **Sample 2808796**

- 1.8.1. On 31 July 2013, the Athlete was subject to an out-of-competition urine doping control. The 2015 LIMS indicates that a metabolite of methasterone was found in this sample.

<sup>6</sup> See in particular CAS 2020/O/6689, para. 614: “The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA’s analysis of the Moscow Data”.

- 1.8.2. Sample 2808796 was also mentioned in an email from Dr. Rodchenkov to Liaison Person Velikodniy of 2 August 2013, indicating the following (see EDP0148):

3. methasterone low

12167	280879 6	f	Куляко (Куляко) (2013-07-31)	2013- 07-31	Training camp   11800	athletic s	RU Novogorsk
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- 1.8.3. Sample 2808796 corresponds to the third sample referred to in the Moscow Washout Schedule reproduced at para. 1.7.1 above.

- 1.8.4. The sample was reported as negative by the Moscow laboratory.

## 2 PROCEDURAL BACKGROUND

- 2.1. On 17 December 2021, the Athlete was notified of the potential anti-doping rule violations and of her right to provide explanations by 14 January 2022 or to admit the potential anti-doping rule violations *inter alia*.
- 2.2. The Athlete responded to this letter on 12 January 2022 and exercised her right to provide an explanation. In her explanation, the Athlete indicated that the anti-doping rule violations asserted against her were “*completely devoid of any foundation*”. In addition, she added that she had not participated in “*any manipulations with doping samples*”.
- 2.3. Following a review of the Athlete’s explanation, on 25 March 2022, the AIU maintained its assertion that she had committed anti-doping rule violations. The Athlete was granted an opportunity to request a hearing by 8 April 2022. The Athlete was specifically informed that, if she failed to request a hearing, she would be deemed to have waived her right to a hearing and to have accepted the asserted anti-doping rule violations, and that the AIU would render a decision confirming the imposition of the consequences set out in the letter.
- 2.4. The Athlete did not respond to the 25 March 2022 letter.
- 2.5. On 11 April 2022, exceptionally, the AIU set a final deadline of 14 April 2022 for the Athlete to request a hearing, failing which the AIU would render a decision confirming the imposition of the consequences set out at section 4 of the attached Notice (i.e., disqualification of results from 18 July 2013 until 3 October 2016).
- 2.6. The 11 April 2022 email similarly remained unanswered.

### 3 REASONED DECISION

#### A) Applicable Rules

- 3.1. Pursuant to Rule 1.7.2(b) of the 2021 World Athletics<sup>7</sup> Anti-Doping Rules (“**WA ADR**”), anti-doping rule violations committed prior to 1 January 2021 shall be governed by the substantive Anti-Doping Rules in effect at the time the alleged anti-doping rule violation occurred and, with respect to procedural matters, by the 2016-2017 IAAF Competition Rules (the “**2016 IAAF Competition Rules**”) for anti-doping rule violations committed prior to 3 April 2017.
- 3.2. As the Athlete’s anti-doping rule violations occurred in 2013, they are governed by the rules at the time of their commission, viz. the 2012-2013 IAAF Competition Rules (the “**IAAF Competition Rules**”), subject to the application of the principle of *lex mitior*.

#### B) Anti-Doping Rule Violations

- 3.3. Per Rule 32.2(b) of the IAAF Competition Rules, the Use of Prohibited Substances constitutes an anti-doping rule violation. The provision adds the following:

*“(i) it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. 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.*

*“(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an antidoping rule violation to be committed.”*

- 3.4. Use within the meaning of Rule 32.2(b) of the IAAF Competition Rules can be established “*by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information*” (Rule 33.3 of the IAAF Competition Rules).
- 3.5. In the present case, the 2015 LIMS data and EDP evidence show that methasterone and metenolone, prohibited anabolic steroids, were detected in samples collected from the Athlete in 2013. This clear and reliable evidence shows that the Athlete used Prohibited Substances in 2013 in breach of Rule 32.2(b) of the IAAF Competition Rules.
- 3.6. In addition, the AIU notes that, when confronted with the anti-doping rule violations, the Athlete did not provide any substantiated explanation for them. In addition, having failed to request a hearing, the Athlete is deemed to have accepted the anti-doping rule violations.

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<sup>7</sup> Previously the International Association of Athletics Federations (“**IAAF**”)

3.7. In view of the above, it is clear that the Athlete committed anti-doping rule violations in breach of Rule 32.2(b) of the IAAF Competition Rules in 2013.

#### C) Applicable Consequences

3.8. By way of background, the AIU notes that the Athlete was previously sanctioned with a period of Ineligibility of four years from 4 October 2016 until 3 October 2020, with disqualification of results from 23 August 2008 until 22 August 2012, for violations committed on 23 August 2008 and 3 September 2011 (the “**First Violations**”).

##### a. Period of Ineligibility

3.9. Per Rule 40.7(d)(i), “[f]or the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6).”

3.10. In the present case, the Athlete committed the 2013 anti-doping rule violations prior to her notification of the First Violations on 11 July 2016 and 16 December 2016 respectively. As a result, the 2013 anti-doping rule violations cannot count as a second violation for the purposes of Rule 40.7(d)(i) and shall be considered as a single first violation together with the First Violations.

3.11. To determine the applicable sanction, the applicable rules indicate that, where multiple violations are to be considered together, “*the sanction imposed shall be based on the violation that carries the more severe sanction*”.

3.12. In the present case, the Athlete already received a four-year sanction for the First Violations. The 2013 anti-doping rule violations cannot be subject to a more severe sanction. As a result, no additional period of Ineligibility can be imposed on the Athlete for the present anti-doping rule violations.

##### b. Disqualification

3.13. Per Rule 40.8 of the IAAF Competition Rules, “[i]n addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the

*resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money.”*

3.14. In the present case, the first evidence of the Athlete’s anti-doping rule violations was on 18 July 2013. As a result, per Rule 40.8 of the IAAF Competition Rules, all results obtained by the Athlete from 18 July 2013 until 3 October 2016 (i.e. until the start of her period of Ineligibility for the First Violations) must be disqualified. The AIU sees no reasons of fairness justifying otherwise given the severity of the violations and the number of violations committed by the Athlete over the course of years. In addition, the Athlete has not even sought to argue that the fairness exception should apply.

D) Dispositive

3.15. In view of all the above, the following decision is hereby rendered (with binding effect on all Signatories to the World Anti-Doping Code, in all sports and countries as per Code Article 15):

3.15.1. The Athlete is found to have committed anti-doping rule violations under Rule 32.2(b) of the IAAF Competition Rules;

3.15.2. All competitive results obtained by the Athlete from 18 July 2013 until 3 October 2016 are disqualified, with all of the resulting consequences, including forfeiture of any medals, titles, points, prize money and prizes.

3.16. The disposition of the matter will be Publicly Disclosed in accordance with Rule 43 of the 2016 IAAF Competition Rules.

3.17. This decision is subject to appeal under Rule 42 of the 2016 IAAF Competition Rules.

Monaco, 11 July 2022