

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS TYRA GITTENS

INTRODUCTION:

1. World Athletics has established the Athletics Integrity Unit ("**AIU**") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code (the "**Code**"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms Tyra Gittens (the "**Athlete**") is a 24-year-old Athlete from Trinidad and Tobago¹. Prior to 5 January 2023, the Athlete was a member of the World Athletics Registered Testing Pool and was therefore at all material times an International-Level Athlete for the purposes of the ADR.
3. The AIU has asserted the commission by the Athlete of Anti-Doping Rule Violations under Rule 2.1 of the ADR which provides that the following shall constitute an Anti-Doping Rule Violation:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample"
4. The AIU has proposed certain Consequences based on its analysis of the degree of Fault that the Athlete bears for those violations.
5. The Athlete has admitted the Anti-Doping Rule Violations asserted and acceded to the Consequences proposed.
6. This decision is therefore issued by the AIU pursuant to Rule 8.5.6 ADR, which provides as follows:

"8.5.6 In the event that the Athlete or other Person either (i) admits the violation and accepts the proposed Consequences or (ii) is deemed to have admitted the violation and accepted the Consequences as per Rule 8.5.2(f), the Integrity Unit will promptly:
 - (a) issue a decision confirming the commission of the violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed);*
 - (b) Publicly Report that decision in accordance with Rule 14;*
 - (c) send a copy of the decision to the Athlete or other Person and to any other party that has a right, further to Rule 13, to appeal the decision (and any such party may, within 15 days of receipt, request a copy of the full case file pertaining to the decision)."*

¹ <https://worldathletics.org/athletes/trinidad-and-tobago/tyra-gittens-14596830>

THE ATHLETE'S COMMISSION OF ANTI-DOPING RULE VIOLATIONS

7. The Athlete has been diagnosed with the medical condition attention deficit hyperactivity disorder (“**ADHD**”). In the past, to treat her diagnosed medical condition, she has legitimately used a medication containing methylphenidate, pursuant to a Therapeutic Use Exemption (“**TUE**”) granted by the Trinidad and Tobago Olympic Committee (“**TTOC**”) that was valid until 31 December 2021.
8. On 26 June 2022, the Athlete provided a urine Sample In-Competition at the Trinidad and Tobago National Championships, which was given code 7118660 (“the **TTO Sample**”). The Athlete declared “*Methylphenidate 20mg tab T.U.E*” on the Doping Control Form (“**DCF**”) consistent with her expired TUE.
9. On 13 July 2022, the Athlete submitted a (late) application for a TUE² for methylphenidate from the AIU on behalf of World Athletics for her anticipated participation in the World Athletics Championships in Eugene, OR, which began on 15 July 2022.
10. By e-mail to the Athlete on the same date, the AIU requested (i) confirmation that the Athlete had qualified for the World Athletics Championships 2022 in Eugene, Oregon and (ii) that the Athlete provide further information to complete her application before it could be presented for review by the World Athletics Therapeutic Use Exemption Committee (“**TUEC**”).
11. On 16 July 2022, the Athlete submitted further documents in support of her TUE application pursuant to the request from the AIU. However, the Athlete failed to confirm that she had qualified for the World Athletics Championships 2022.
12. On 18 July 2022, the AIU wrote to the Athlete acknowledging receipt of the additional documents and confirmed that her TUE application had been referred to the TUEC for review. The AIU also confirmed that the deadline for the TUEC to determine her application was 6 August 2022 (unless the TUEC requested further information to determine the application). The Athlete did not respond to this e-mail.
13. On 23 July 2022, the Athlete competed in the Long Jump at the World Athletics Championships 2022 in Eugene, Oregon and provided a urine Sample In-Competition, which was given code 193600V (the “**WA Sample**”). The Athlete declared “*methylphenidate*” on the DCF.
14. On 31 July 2022, the Athlete wrote to the AIU requesting an update on the progress of her TUE application and whether a decision could be made in advance of 6 August 2022. The AIU replied on 1 August 2022 indicating that the Athlete’s request had been sent to the TUEC, but that it was not able to confirm whether a decision would be made in advance of 6 August 2022.

² Rule 4.4.2(b) ADR provides specifically that Athletes who are International-Level Athletes must apply to World Athletics/the Integrity Unit for a TUE. Moreover, Rule 4.4.4(b) specifies that an application must be made as soon as possible and in any event 30-days before the Athlete’s next competition.

15. On 3 August 2022, the AIU wrote to the Athlete requesting further information in support of her TUE application by no later than 17 August 2022. The AIU also informed the Athlete that her application may be returned as incomplete if the information was not provided.
16. The Athlete failed to respond to this e-mail.
17. Therefore, on 18 August 2022, the AIU wrote to the Athlete confirming that her application for a TUE was being returned to her as incomplete.
18. On 22 August 2022, the World Anti-Doping Agency (“WADA”) accredited laboratory in Lausanne, Switzerland (the “Lausanne Laboratory”) reported an Adverse Analytical Finding in the WA Sample based on the presence of ritalinic acid, a Metabolite of methylphenidate³.
19. On 3 November 2022, the AIU notified the Athlete of the Adverse Analytical Finding of ritalinic acid in the WA Sample and requested her explanation.
20. On 10 November 2022, the Athlete responded to the AIU indicating (i) that she accepted a voluntary Provisional Suspension pending determination of the matter and (ii) that she wished to apply for a retroactive TUE (“r-TUE”) under Article 4.3 of the WADA International Standard for Therapeutic Use Exemptions (“the ISTUE”)⁴. The Athlete was granted an extension until 22 December 2022 by which to do so.
21. On 21 November 2022, the Athlete wrote to the AIU enclosing a copy of a letter she had received from the Caribbean Regional Anti-Doping Agency (“CRADO”) dated 15 November 2022, notifying the Athlete that the TTO Sample collected on 26 June 2022 had returned an Adverse Analytical Finding for methylphenidate and its Metabolite, ritalinic acid.
22. On 22 November 2022, the AIU wrote to the CRADO noting (i) that the AIU had already notified the Athlete of the Adverse Analytical Finding in the WA Sample on 3 November 2022, (ii) that the Athlete was an International-Level Athlete for the purposes of the ADR at the time that the TTO Sample was collected from her on 26 June 2022⁵, (iii) that the Athlete had indicated that she wished to apply to the AIU for a r-TUE, (iv) that as an International-Level Athlete, the Athlete under the ADR, she was required by Rule 4.4.2(b) ADR to apply to World Athletics for a TUE, and (v) pursuant to Article 6.3 of the WADA ISTUE, an Athlete cannot apply to more than one ADO for a TUE, nor have more than one TUE submitted at a time for the same substance/condition.

³ According to an independent scientific expert opinion obtained by the AIU, the estimated concentration of ritalinic acid in the WA Sample would be consistent with the daily ingestion of 20mg methylphenidate.

⁴ “4.3 In exceptional circumstances and notwithstanding any other provision in this *International Standard for Therapeutic Use Exemptions*, an Athlete may apply for and be granted retroactive approval for their Therapeutic Use of a *Prohibited Substance or Prohibited Method* if, considering the purpose of the *Code*, it would be manifestly unfair not to grant a retroactive TUE. For *International-Level Athletes* and *National-Level Athletes*, an *Anti-Doping Organization* may grant an Athlete’s application for a retroactive TUE pursuant to this Article only with the prior approval of WADA (and WADA may in its absolute discretion agree with or reject the *Anti-Doping Organization’s* decision).”

⁵ The Athlete was a member of the World Athletics Registered Testing Pool and therefore an International-Level Athlete pursuant to rule 1.4.4(a) ADR.

23. On 23 November 2022, the CRADO wrote to the AIU confirming that its position was that the AIU should proceed with determining the Athlete's TUE application (and with any Results Management related to the TTO Sample and the WA Sample that might be required if the Athlete's TUE application was not successful).
24. On 22 December 2022, the Athlete filed an explanation for the Adverse Analytical Finding in the WA Sample explaining that it had been caused by her use of medication that had been prescribed to treat ADHD.
25. The Athlete also applied for a r-TUE under Article 4.3 of the ISTUE to justify her use of that medication and therefore the Adverse Analytical Findings.
26. On 10 March 2023, (following additional enquiries made by AIU with the Trinidad and Tobago Olympic Committee ("TTOC")) the AIU rejected the Athlete's request for a r-TUE under Article 4.3 ISTUE on the grounds that no exceptional circumstances existed.
27. On 17 March 2023, the AIU received from the Athlete a submission concerning her degree of Fault for the Adverse Analytical Findings.
28. Rule 2.1 is a strict liability offence that is established simply by proof that a prohibited substance was present in the Athlete's samples, i.e., the AIU does not have to prove how the substance got into the Athlete's system or that the Athlete took the substance intentionally (or even knowingly).

CONSEQUENCES

A. Period of Ineligibility

i. How methylphenidate/ritalinic acid got into the Athlete's system

29. The Athlete has asserted that she did not intend to cheat and that the methylphenidate in her urine samples was the result of her ingestion of a medication containing methylphenidate that she had been prescribed to treat her ADHD. In support of her explanation, the Athlete relied on (among other things) the documents filed with her TUE applications including statements from her physicians as well as diagnostic and medical records.
30. The AIU accepts that the Athlete has established that it is more likely than not that the presence of the methylphenidate and ritalinic acid found in her urine samples was due to her ingestion of medication containing methylphenidate in the days prior to collection of the samples.

ii. Rule 10.2

31. The Adverse Analytical Findings constitute (collectively) the Athlete's first Anti-Doping Rule Violation⁶.

⁶ In accordance with Rule 10.9.3(a) ADR, for the purposes of imposing consequences under the ADR, the Anti-Doping Rule Violations will be "*considered together as one single first Anti-Doping Rule Violation, and the sanction imposed will be based on the Anti-Doping Rule Violation that carries the more severe sanction*" if

32. Rule 10.2.1 mandates a two-year ban for a Rule 2.1 violation that is not “*intentional*” and is a first violation. If the prohibited substance in question is classified as a Specified Substance (as here), the AIU has the burden of proving that the violation was “*intentional*” within the meaning of Rule 10.2.3 ADR. The jurisprudence is clear that what counts in this context is what the Athlete actually knew, not what she should have known⁷.
33. As explained in more detail below, the AIU accepts that the Athlete had not realised that her previous TUE had expired by the time of the TTO Sample collected on 26 June 2022, supported by her disclosure on the DCF, and therefore inadvertently continued to use her medication without a valid TUE. She was not advised that the TTO Sample was positive for methylphenidate, or that her TUE had expired for this purpose, until November 2022, after the Sample collected from her at the World Championships on 23 July 2022.
34. Similarly, the Athlete submitted a (late) application for a TUE for methylphenidate to the AIU on 13 July 2022 for the purpose of her participation in the World Championships. However, by the time of the WA Sample collected on 23 July 2022, the Athlete had been advised that her application had been submitted to the WA TUEC for review. The AIU therefore also accepts that the Athlete had no information at the time of the WA Sample that her TUE application was incomplete. The AIU also accepts that the medication was used for legitimate medical reasons and the Athlete did not intend to cheat. Accordingly, the AIU accepts that the violation was not “*intentional*” within the meaning of Rule 10.2.1 and Rule 10.2.3, and so Rule 10.2.2 applies and the starting point for the applicable period of ineligibility is two years.

iii. Rule 10.6 ADR

35. Rule 10.6.1(a) provides that if the Athlete can establish that they bear No Significant Fault or Negligence and that the prohibited substance is a Specified Substance, then the otherwise applicable two-year period of ineligibility may be reduced by up to 100% (in which case there would be a reprimand only). The definition of No Significant Fault or Negligence is: “*The Athlete or other Person establishing that their 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 relation to the Anti-Doping Rule Violation*”. Where No Significant Fault or Negligence is found, the amount of reduction to be applied depends upon the degree of the Athlete’s Fault.
36. A plea of No Significant Fault or Negligence is assessed by considering how far the Athlete departed from their duty under the ADR to use “*utmost caution*” to ensure that they would not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation⁸. *The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every*

(as here) the Athlete did not commit the second Anti-Doping Rule Violation after she received notice of the first.

⁷ See e.g., *ITF v Sharapova*, Independent Tribunal decision dated 6 June 2016, para 68, not challenged on appeal, *Sharapova v ITF*, [CAS 2016/A/4643](#)

⁸ See, for example, *Kutrovsky v. ITF*, [CAS 2012/A/2804](#), para 9.49; *FIFA & WADA*, [CAS 2005/C/976 & 986](#) paras 73-75.

step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant".⁹ The definition of Fault in the ADR makes clear that the first question is how far the Athlete departed from the duty of utmost caution (i.e., objective fault) and the second question is whether there is any acceptable explanation for that failure (i.e., subjective fault).

37. The standard of "*utmost caution*" is very onerous and requires a player to show that they "*made every conceivable effort to avoid taking a prohibited substance*"¹⁰. It follows that "*even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence*"¹¹.
38. The Athlete asserts that she bears No Significant Fault or Negligence, so that a period of ineligibility of less than two years should be imposed, because: (i) she had previously been diagnosed with ADHD and was receiving ongoing treatment with medication containing methylphenidate, (ii) she participated predominantly in NCAA competitions and since methylphenidate is not a prohibited substance in the NCAA, she has never needed any form of authorisation to participate in those competitions whilst using her medication (iii) in 2021 she possessed a valid TUE from the TTOC permitting her use of medication containing methylphenidate (principally for the purposes of the Tokyo Olympic Games), (iv) the violation was unintentional and inadvertent because she believed she had a valid TUE from the TTOC when the TTO Sample was collected (and had declared so on her DCF) and she did not know that her TUE application was incomplete when the WA Sample was collected, (v) she had not realised that her TUE granted by the TTOC had expired until she became aware of the Adverse Analytical Finding in the TTO Sample and (vi) she has subsequently applied for (and been granted) a further prospective TUE permitting her use of medication containing methylphenidate. Those assertions were supported by (among other things) the Athlete's medical records and statements from her physicians.
39. The AIU accepts that the above factors weigh in the Athlete's favour when assessing her level of Fault. However:
 - 39.1. Rule 1.5.1 of the ADR states that Athletes must "*be knowledgeable of and comply with these Anti-Doping Rules at all times*", "*take responsibility, in the context of anti-doping, for what they ingest and Use*", and "*make sure that any medical treatment they receive does not violate these Anti-Doping Rules*";
 - 39.2. Rule 4.4.4(a) provides that "*If the Athlete does not already have a TUE granted by their National Anti-Doping Organisation for the substance or method in question, the Athlete must apply directly to the World Athletics/the Integrity Unit for a TUE in accordance with the process set out in the International Standard for Therapeutic Use Exemptions using the form posted on the World Athletics website and on the Integrity Unit website.*". Rule 4.4.4(b) of the ADR states "*An application to World Athletics for*

⁹ See *IBAF v Luque*, IBAF Anti-Doping Tribunal Decision dated 13 December 2010, para 6.10

¹⁰ See *Knauss v FIS*, CAS 2005/A/847, para 7.3.1

¹¹ See *Adams v CCES*, CAS 2007/A/131, para 155

grant or recognition of a TUE must be made as soon as possible (save where Article 4.1 or 4.3 of the International Standard for Therapeutic Use Exemptions applies) and in any event at least 30 days before the Athlete's next competition";

- 39.3. The comment to Rule 4.4.4 ADR specifically states that “*An Athlete should not assume that their application for grant or recognition of a TUE (or for renewal of a TUE) will be granted. Any Use or Possession or Administration of a Prohibited Substance or Prohibited Method before an application has been granted is entirely at the Athlete's own risk*”; and
- 39.4. Ultimately, the Athlete knew and understood that she required a TUE for certain competitions (i.e., those outside of the NCAA) from (at the latest) 2021 onwards. She nevertheless still failed to apply for a TUE prior to her participation in the non-NCAA competition on 26 June 2022 (Trinidad and Tobago National Championships), failed to make an application to World Athletics sufficiently in advance of the World Championships in July 2022 and then failed to complete her (late) TUE application.
40. As a result of the foregoing, the Athlete knew, and is deemed to have been on specific notice that, if she continued to use her medication containing methylphenidate after her valid TUE expired on 31 December 2021, she would be at risk of committing an Anti-Doping Rule Violation. The Athlete is deemed to have voluntarily assumed that risk when she continued to ingest the medication containing methylphenidate after 31 December 2021 without any longer possessing a valid TUE. The Athlete's Fault is not in her use of methylphenidate as such, but rather in her failure to obtain a renewed TUE in time¹².
41. Having regard to all of the circumstances of the case and both the objective and subjective factors, in particular that (i) the Athlete was receiving legitimate treatment for a properly diagnosed medical condition and had a valid TUE before the Adverse Analytical Findings and (ii) the violation was inadvertent in that the Athlete believed she had a valid TUE at the time that the TTO Sample was collected and had no reason to believe that her TUE application was incomplete at the time the WA Sample was collected, the AIU considers that the Athlete's degree of Fault was ultimately at the level of the standard light degree of Fault. Therefore, the AIU has proposed, and the Athlete has accepted, a period of Ineligibility of six (6) months.
42. In accordance with Rule 10.13.2(b), the Athlete is entitled to receive credit for the period that she has served while provisionally suspended (which provisional suspension she voluntarily accepted), such that her six-month period of ineligibility will be deemed to have started running from 10 November 2022.
43. Furthermore, the AIU also considers that the Athlete may benefit from Rule 10.13.1 ADR in relation to the period between Sample collections and notification of the Adverse Analytical Findings in the WA Sample and the TTO Sample. In particular, the WA Sample was collected

¹² *WADA v Sundby & FIS*, CAS 2015/A/4233, para 105; *ITF v Fridman*, Anti-Doping Tribunal decision dated 2 March 2006, para 34 (“*It is impossible to avoid the conclusion that the player was personally at fault for failing to ensure, by whatever steps were necessary, that she had a valid TUE for terbutaline as at 5 October 2005. [...] the offence is not merely technical [...] the player circumvented safeguards built into the rules to ensure fairness to other competitors*”).

on 23 July 2022 and the Athlete was notified of the Adverse Analytical Finding in this Sample on 3 November 2022 - a period of circa 3.5 months.

44. Whilst the delay in notifying the Athlete of the Adverse Analytical Finding in the WA Sample may be explained¹³, it does not alter the fact that it is not attributable to the Athlete. The AIU notes that the Athlete accepted a voluntary provisional suspension within a week of first being notified of the Adverse Analytical Finding in the WA Sample and, had either the TTO Sample or the WA Sample been notified on a timelier basis, she would have been entitled to greater credit against any prospective period of Ineligibility.
45. In all the circumstances, the period of Ineligibility imposed may therefore be backdated to commence on a date two months after the collection of the WA Sample, i.e., to 26 September 2022, such that the six-month period of Ineligibility therefore expires on 25 March 2023.

B. Disqualification of results

46. In accordance with Rule 9 ADR and Rule 10.10 ADR, the Athlete's results from 26 June 2022 until 10 November 2022 are disqualified with all resulting consequences including forfeiture of any medals, titles, points, prize money and prizes.
47. The Athlete has accepted the above Consequences for her Anti-Doping Rule Violations and has expressly waived her right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

PUBLICATION

48. In accordance with Rule 8.5.6(b) ADR, the AIU shall publicly report this decision on the AIU's website.

RIGHTS OF APPEAL

49. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
50. Further to Rule 13.2.3 ADR, WADA and the Trinidad and Tobago National Olympic Committee have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Rule 13.6.1 ADR.
51. If an appeal is filed against this decision by WADA or the Trinidad and Tobago National Olympic Committee, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 30 March 2023

¹³ The delay in notification was due to a request for further analysis of the WA Sample, which was not completed by the Laboratory and reported (negative) to the AIU until 6 October 2022.