

## **JUDICIAL AWARD BY THE FISA DOPING HEARING PANEL**

**sitting in the following composition**

**Members:**               **John Boulton**  
                                  **Jo Hannafin**  
                                  **Algirdas Raslanas**

**In the case of Bartosz Zablocki**

### **The Facts**

On 26 July 2017, the International World Games Association (IWGA) conducted in-competition anti-doping testing at the World Games in Wroclaw in Poland. A urine sample was collected from the Athlete, Bartosz Zablocki.

The urine sample collected from the Athlete was numbered 6274870 and this was recorded on the Doping Control Form. The Athlete signed this form and received a copy. Bartosz Zablocki declared on the doping control form that he had taken Ibuprofen and several supplements during the seven days before the test. He made no comments on the doping control procedure. The WADA accredited laboratory in Warsaw received the "A and B" urine samples on 27 July 2016.

The results from the Warsaw Laboratory indicate that Sample 6274870 showed the presence of Clomiphene and its metabolite: Desethylclomiphene. This is a specified substance and is classified in the category S4 Hormone and Metabolic Modulators in the 2017 WADA Prohibited List.

No departures from the International Standard for Testing (ISL) have been established as having occurred during the testing or analysis procedure. The Athlete does not have a valid TUE.

The Athlete was notified of the positive test result by the Chair of the IWGA, Volker Bernardi, and by the Executive Director of FISA, Matt Smith, in letters dated 5 September 2017. A provisional suspension from competition under Article 7.9.1 of the FISA Anti-Doping Bye-Laws was applied from that date. The Athlete did not request the analysis of the B sample.

An IWGA hearing took place on 21 November 2017. The IWGA Anti-Doping Panel stated in the Decision that the Athlete at the hearing had "made no substantial additional statements compared with those given in writing during the documentary procedure". The IWGA Anti-Doping Panel found that an Anti-Doping Rule Violation had been established under the IWGA Anti-Doping Rules and the Athlete's results from the 2017 Games were disqualified.

On 12 December 2017, the Executive Director of FISA sent a letter to the National Federation informing the Athlete that the case was transferred to FISA for any further sanction that might be applied, and asking the Athlete to complete the Athlete's Questionnaire.

The Athlete submitted the completed questionnaire on 25 January 2017 with his medical notes and translation.

The FISA Hearing Panel requested FISA to write to the Lausanne Laboratory to obtain information on the substance found in the Athlete's sample, this information was received on 20 February 2017.

There were delays in establishing a date for the hearing with both the Athlete and FISA having issues with timing. The Athlete indicated that the Hearing Panel could reach a decision based on his written submissions.

On 1 March 2017, the Athlete was asked to confirm if he could attend a hearing by teleconference on 8 March. The Athlete replied on 6 March stating that he had not seen the email and that he could participate in the hearing but at a later time of day. Unfortunately, one of the Hearing Panel members could not participate at the time set by the Athlete. Another hearing was set up for 15 March. However, the Athlete made contact on 15 March stating that he felt too unwell to attend the hearing. A further hearing was set for 28 March, but unfortunately, this was cancelled by FISA due to technical issues. The next hearing was organised for 5 April, however this was cancelled by the Athlete as he claimed that he was too busy. It was confirmed following the cancellation of the hearing on 5 April, that the Athlete felt that he had presented his case in his written submissions. So the Panel conducted a hearing on this basis on that basis.

### **Applicable law**

#### ***The applicable rules***

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test, 27 July 2017). These rules are consistent with the World Anti-Doping Code.

#### ***The relevant rules***

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1.1 which states it is each Rower's personal duty to ensure no Prohibited Substance enters his body; and that the presence of a Prohibited Substance in an Athlete's sample is an Anti-Doping Rule Violation.
- Article 10.2 which sets a period of four years' ineligibility for a first violation for a prohibited substance, unless the anti-doping rule violation involves a specified substance and it can be established that the anti-doping rule violation was not intentional. The athlete has the opportunity to establish the basis for eliminating or reducing this sanction as provided in Articles 10.4, 10.5 or 10.6.
- Article 10.11.3 which provides for credit for a provisional suspension served in relation to the period of ineligibility.

## Merits

The Panel is satisfied that an anti-doping rule violation was established by the evidence of the laboratory analysis. There was the presence of Clomiphene and its metabolite, Desethylclomiphene, found in his sample. The Athlete had admitted in his written evidence that he took medicine containing Clomiphene on medical advice from November 2016 to January 2017 to deal with a loss of libido. He took it daily over this period, and then ceased using it as tests showed that his testosterone level had reached normal levels. In his statement he said that he had ended his rowing career in 2016, and later took up indoor rowing for fitness. He then had the chance to compete in the World Games in July 2017. However, the translation of his medical notes indicated that he was doing rowing training (indoor rowing) at the time he consulted the doctor who prescribed the medicine for him.

As the time between his ceasing to take the medicine (January 2017) to the time of the test (July 2017) was a number of months, the Panel asked FISA to seek some expert evidence from one of the WADA accredited laboratories as to the likelihood that this substance could remain in a person's system for that length of time. The evidence from Dr. Tiia Kuuranne PhD of the Swiss Laboratory for Doping Analyses concluded "*I would not exclude the possibility of these low concentration findings to result from the administration as far as from 6 months before.*" The Panel accepted this evidence.

Due to the Athlete effectively declining the opportunity to appear in person before the Tribunal, the Tribunal did not have the chance to hear from him personally, or to ask him questions, to allow it to come to some conclusions about the veracity of some of his written statements. The Tribunal was keen to hear about his intentions and his motivations at the time of using the prohibited substance between November 2016 and January 2017. This was relevant in two respects in relation to the period of ineligibility under Article 10 of the Anti-Doping Bye-Laws.

First, it was important in respect of Article 10.2.1 which provides "The period of ineligibility shall be four years where.....the anti-doping rule violation involves a Specified Substance and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional", and Article 10.2.2 which provides "If Article 10.2.1 does not apply, the period of ineligibility shall be two years".

The written material led the Tribunal to have some doubts about whether the use of the prohibited substance may have been intentional, that is whether the athlete may have been "cheating" as predicated in Article 10.2.3. In the (translated) document setting out the medical history taken by the prescribing doctor, it is noted that when he started taking the medicine he was doing indoor rowing. However, in his written statement the athlete said that he stopped his rowing career in 2016, but took up indoor rowing for fitness. We would have liked to have him present to clear up any apparent inconsistency, as well as to hear what his understanding was in relation to the operative elements of the medication, and the fact that it increased testosterone levels in men, which we expect would be a warning sign for an athlete.

In the absence of clearer evidence about the athlete's state of mind, the Tribunal on balance has decided that there is not sufficient evidence that the violation was intentional, so that Article 10.2.2 applies, and therefore the period of ineligibility should be two years.

The second respect where oral evidence from the athlete would have been of assistance is in relation to Article 10.5 which provides that “Where the anti-doping rule violation involves a Specified Substance and the Athlete.....can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete’s.....degree of Fault”. The Tribunal would have liked to ask the Athlete some questions about any checks he took in relation to the substance, at the time of taking it, as well as his rowing status at that time, in view of the discrepancies in the written material he provided.

Without further evidence beyond the written statements, the Tribunal is not satisfied that there was not a significant degree of fault or negligence, and considers that it is unable to reduce the period of ineligibility below the two year period. The Tribunal notes that it remains the athlete’s responsibility to monitor and know about what substances he or she ingests, irrespective of intent (Article 2.1.1) and that this applies to indoor rowing as well as on-water rowing, whenever the athlete competes or remains eligible to compete, whether or not he or she is taking a temporary break from the sport. There is a means to step away from the requirements of the Anti-Doping Bye-Laws, and then to return to competitive sport later, but the process for so doing must be strictly followed, in order to prevent cheating.

This is set out in Article 5.7.1, and the Athlete in this case has not followed that process at all, and this of itself constitutes significant negligence and fault in this case. The Athlete stated in the Questionnaire that he completed, that he had undergone anti-doping education, but nevertheless he was not diligent in respect of the substances he allowed to enter his body during the temporary retirement, if there actually was a temporary retirement, which is not totally clear to us. He will now serve a period of ineligibility of 2 years, and if he wants then to return to competition he will need to follow the process under Article 5.7.2.

## **FOR THESE REASONS**

### **The FISA Doping Hearing Panel finds:**

1. The Panel is satisfied that the requirements of Article 2.1.1 have been met and the Athlete has committed an Anti-Doping Rule Violation.
2. The period of ineligibility should be for two years under Articles 10.2. The period should not be reduced under Article 10.5.
3. Normally the period of ineligibility would commence from the date of the hearing but the Panel notes that the Athlete was provisionally suspended from 5 September 2017, and under Article 10.11.3, the period of ineligibility should commence from that date, 5 September 2017.
4. This award is rendered without costs.

Lausanne, 10 April 2018

**For the FISA Doping Hearing Panel:**

John Boulton

Jo Hannafin

Algirdas Raslanas