

FISU Correspondence and Results Management

The Athlete was informed by FISU through the Serbian National Rowing Federation (the "Federation") on 1 October 2008 that a violation of the World Anti-Doping Code had occurred in relation to sample A2359304. In this letter, the Athlete was invited by FISU to provide any information or explanation which might have led to this adverse analytical finding. The Athlete was informed of his right to request a B sample analysis.

The Federation confirmed on 3 November 2008 that a control analysis of the B sample was requested.

Following the IRMS analysis and the analysis of B sample 235 9304 conducted by the Austrian Research Centers, in two reports dated 29 October 2008 and 5 November 2009, FISU informed the Federation on 6 November that while the IRMS was negative, the result of the B sample analysis confirmed the result of the A sample analysis: the stimulant amphetamine was found.

FISU confirmed the disqualification of the Athlete and requested the return of the two gold medals.

FISA Results Management

Results management and the conduct of the hearing now became the responsibility of FISA. On 18 November 2008, FISA sent a letter to the Federation informing them of the Athlete's suspension from all national and international competition and the appointment of the FISA Doping Hearing Panel. The Athlete was requested to confirm whether he wished to appear at a hearing.

On 24 November, the Federation confirmed that Goran NEDELJKOVIC would attend the hearing as well as Nebojsa Jevremovic, the Secretary General of the Serbian Rowing Federation. FISA confirmed that the hearing would be conducted by video conference on 15 December 2008.

The Hearing

In accordance with the Rules, a Hearing Panel was formed by the FISA Executive Director consisting of John Boulton (Chair), Tricia Smith and Jean-Christophe Rolland. Dr. Alain Lacoste attended as medical expert invited by the panel.

In his explanation, the Athlete stated that he had attended a party at a night club on 6 September 2008, the night before the finals event. He went there to meet an old friend who was celebrating his birthday. He had one non-alcoholic drink at the party. He claimed that this drink must have contained a prohibited substance which led to the positive drug test for amphetamines the following day. The Athlete claimed that this was the only way the drug could have entered his body.

Applicable Law

The applicable rules

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (7 September 2008). 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 10.2 which sets out the Imposition of Ineligibility for Prohibited Substances and Prohibited Methods. The Article sets a period of two years' ineligibility for a first violation of Article 2.1 (the presence of a Prohibited Substance or its metabolites or Markers);
- Article 10.5 which deals with Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances. The Article provides for elimination of the period of ineligibility based on exceptional circumstances and no fault or negligence. Article 10.5.2 provides for a reduction to no less than one half of the minimum period of ineligibility in the case of "no significant fault or negligence."

Merits

According to FISA Rules and the World Anti-Doping Code, the burden of proof is on the athlete to rebut the presumption of guilt established by the presence of a prohibited substance in his body or fluid.

The Panel is satisfied that a positive test was established by the evidence. In fact the Athlete did not dispute the findings of the test. The sanction for a positive finding in this case is a two year period of ineligibility.

The Panel must then decide if the Athlete provided sufficient evidence of exceptional circumstances and no fault or negligence (Article 10.5) or no significant fault or negligence (Article 10.5.2) to reduce the period of ineligibility. Under the Article the Athlete must also explain how the Prohibited Substance entered his body.

Goran NEDELJKOVIC's explanation of how the substance entered his body was that his drink might have contained prohibited substances at a party he attended the night before being subject to an in-competition anti-doping test. He claimed that this was the only way the substance could have entered his body.

With regard to his explanation, aside from his own evidence, the Athlete did not present evidence that he had attended a party or statements from people who may have also attended the party. He did not present any other evidence to support his explanation.

With regard to his explanation relating to no fault or no significant fault or negligence, the Panel finds that the Athlete's explanation only suggested a way that the substance could have entered his body. No evidence was presented which established how the substance came to be in his system.

The Panel finds the Athlete's explanation relating to no fault or negligence and to there being no significant fault or negligence, to be insufficient and finds that the Athlete was at fault and was negligent, and that the sanction cannot be reduced.

Athletes are responsible for the medications or substances they take into their bodies. It is not a sufficient explanation to suggest that a substance may have entered his body through a contaminated drink without providing any evidence showing that is what could have happened. On the balance of probabilities, the Athlete has failed to establish how the substance entered his system.

FOR THESE REASONS

The FISA Doping Hearing Panel finds:

1. The Athlete Goran NEDELJKOVIC has committed an Anti-Doping Rule Violation under the Anti-Doping Bye-Laws.
2. The Athlete is suspended and ineligible for two years from national and international competition.
3. The period of ineligibility commences from the date of the provisional suspension, 18 November 2008.
4. This award is rendered without costs.

26 January 2009

For the FISA Doping Hearing Panel:

Chair: John Boulton

Members: Tricia Smith

Jean-Christophe Rolland