

## Case 12 – Presence of Specified Substance

### Key words

*Article 2.1; Article 10.4; Article 10.5.1; Article 10.5.2; No Fault or Negligence; No Significant Fault or Negligence; Prohibited Substance; Medicine; Inference; Ephedrine; Intent to Enhance Sport Performance; Sanction Reduction; [Doping](#)*

### Summary

Athlete L was charged with an Article 2.1 Anti-Doping Rule Violation (ADRV) for the presence of ephedrine, a Specified Substance. The case was referred to the National Anti-Doping Panel for resolution under the Anti-Doping Rules of the British Boxing Board of Control (“BBBOC”). Athlete L argued that the ephedrine entered his body by the use of a cold remedy that he took for medical reasons, and not to enhance his performance. He therefore sought a reduction from the standard sanction of two years ineligibility under Articles 10.4 (no Intention to enhance performance) and 10.5 (no Fault or Negligence). The Tribunal noted that Athlete L had provided no corroborating evidence to support his submissions and therefore found that Athlete L had; (i) failed to show how the ephedrine had entered his body; and (ii) failed to show that the presence of the Specified Substance was not intended to enhance his sport performance for the purposes of Article 10.4 and (iii) was unable to establish he was not at fault for the purpose of Article 10.5. A sanction of two years ineligibility was imposed and no reduction was permitted.

### Background Facts

Athlete L, a boxer, was charged with an Article 2.1 ADRV for the presence of ephedrine, a Specified Substance. The case was referred to the National Anti-Doping

Panel for resolution under the Anti-Doping Rules of the BBBOC. Athlete L argued that the ephedrine entered his body by the use of a cold remedy that he has taken for medical reasons and was not to enhance his performance. He further argued that he did not expect over-the-counter medicines to contain Prohibited Substances. He therefore sought a reduction from the standard sanction of two years ineligibility under Articles 10.4 (no intention to enhance performance) and 10.5. (no fault) Athlete L was not present at the hearing.

### **Reasoning and Decision of the Tribunal**

UK Anti-Doping argued that Athlete L had provided insufficient information to satisfy the requirements of either Article 10.4 or 10.5. As there was neither adequate witness evidence nor sufficient documentary evidence regarding his illness, UK Anti-Doping argued that a two-year period of ineligibility should be imposed.

The Tribunal drew inferences from the fact that Athlete L did not attend the hearing to give evidence and to allow UKAD to cross-examine him. It therefore concluded that Athlete L had failed to discharge his burden of establishing how ephedrine entered his body. The Tribunal further held that even if Athlete L had managed to discharge this burden, there was no suggestion that Athlete L made any enquiry as to the ingredients of the product (so there was little prospect of successfully arguing he was not at fault) and Athlete L offered no evidence to discharge the burden of proof that was placed on him to show that he did not intend to enhance his performance. The Tribunal therefore imposed the standard period of Ineligibility for a first violation of two years.

### **Learning points**

At the time of this decision, March 2014, the Athlete L had the burden of proving how the substance entered the body in order to secure a reduction in sanction under Articles 10.4 or 10.5, If unable to do so, the athlete would be liable to receive the standard sanction. Even if the athlete can do so, the onerous nature of the personal obligation to ensure they know what substances are entering their bodies means they

cannot rely on assumptions or others to verify products. Article 10.4 has since been superseded by the 2015 UK Anti-Doping 2015 Rules.

