

Case 14 – Presence Specified Substance

Key words

Article 2.1; Presence; Article 10.4; Article 10.5.1; Article 10.5.2; No Fault or Negligence; No Significant Fault or Negligence; Methylhexanamine (MHA); Weight Gain; [Doping](#)

Summary

Athlete I was charged with an Article 2.1 Anti-Doping Rule Violation (ADRV) following an Adverse Analytical Finding for the presence of methylhexanamine (MHA), a Specified Substance. Athlete I admitted the violation but sought a reduction from the standard sanction. The case was referred to the National Anti-Doping Panel for resolution under the 2009 UK Anti-Doping Rules (ADR). The Tribunal found, notwithstanding Athlete I's ignorance of the presence of a Specified Substance in the supplement he consumed, that Athlete I failed to prove to their comfortable satisfaction that he did not intend to enhance his sport performance by taking the supplement, and so was unable to take advantage of a reduction in sanction under Article 10.4. However, the Tribunal found that Athlete I's ignorance of the presence of a Prohibited Substance in the supplement meant that he could take advantage of a reduction in sanction under Article 10.5.2, and imposed a period of ineligibility of 12 months on the basis that he was not at significant fault for failing to realise that the supplement contained a Specified Substance.

Background Facts

Athlete I, an amateur boxer, was charged with an Article 2.1 ADRV for the presence of MHA. He admitted the charge, but requested a hearing as to the consequences. Athlete I argued that the substance had entered his body through the supplement 'Rocket Fuel' which he had ingested in order to lose weight for a fight, and that he was unaware it contained a Specified Substance. Athlete I said that he had taken the supplement until Thursday before his fight on Saturday, and that he stopped because he was having difficulty sleeping at night and felt nauseous. These facts were accepted by UKAD and by the Tribunal.

Reasoning and Decision of the Tribunal

Athlete I sought a reduction in sanction under Article 10.4¹ (no Intention to enhance performance), and argued that he was unaware that the supplement contained a Specified Substance and so could not have intended to enhance his sport performance by use of that Specified Substance.

The Tribunal considered the conflicting authorities on the question of whether the intention needed to relate to the particular Specified Substance, so that an athlete could rely on Article 10.4 if they did not *know* that the *product/supplement* they were taking contained the Specified Substance (*Flavia Oliviera v USADA (CAS)*, *Erkand Qerimaj v IWF (CAS)* or whether the intention related to taking the general product which contained the Specified Substance (*Kurt Foggo v NRL (CAS)*, , *ITF v Dimitar Kutrovsky (ITF)*, , *Dimitar Kutrovsky v ITF (Appeal) (CAS)*). Having reviewed the authorities, the Tribunal opted to follow the reasoning in the *Kutrovsky* appeal case. Accordingly, the Tribunal found, notwithstanding Athlete I's ignorance of the presence of a Specified Substance in the supplement he consumed, that Athlete I failed to prove to their comfortable satisfaction that he did not intend to enhance his sport performance by taking the supplement; he had taken the substance to allow him to perform and so was unable to take advantage of a reduction in sanction under Article 10.4. However, the Tribunal found that Athlete's ignorance of the presence of a Specified Substance in the supplement meant that he *could* take advantage of a reduction in sanction under Article 10.5.2 (no Significant Fault or Negligence), and

¹ Article 10.4 has since been superseded by the 2015 UK Anti-Doping 2015 Rules.

imposed a period of Ineligibility of 12 months on the basis that Athlete I was not at significant fault for failing to realise that the supplement contained a Prohibited Substance.

Learning points

An athlete may still avail himself of Article 10.5 of the ADR even where a failure to demonstrate lack of intent to enhance sport performance means he could not avail himself of Article 10.4.

