

Case 15 – Presence of Prohibited Substance

Key words

Article 2.1; Presence; Article 10.4; Article 10.5.2; No Significant Fault or Negligence; Methylhexanamine (MHA); Weight Gain; Appeal; Intent to Enhance Sport Performance; Specified Substance; [Doping](#)

Summary

UK Anti-Doping appealed to the National Anti-Doping Panel (NADP), in accordance with the UK Anti-Doping Rules as adopted by the British Boxing Board of Control, following an NADP first instance decision which imposed a sanction of 12 months ineligibility upon Athlete I as a result of a positive finding for methylhexanamine (MHA), a Specified Substance. UKAD argued that the Anti-Doping Rules had been applied erroneously.

The Appeal Tribunal concluded that Athlete I did not satisfy the conditions of Article 10.4¹ of the 2009 UK Anti-Doping Rules (ADR). The Appeal Tribunal also concluded that the First Instance Tribunal was in error in concluding that Athlete I satisfied the provisions of Article 10.5.2 of the ADR and that Athlete I was unable to show he had acted without significant fault. However, the Appeal Tribunal ruled that, in order to serve justice, the 12-month sanction should stand, although it made it clear this was an act of mercy on its part and entirely exceptional.

Background Facts

¹ Article 10.4 has since been superseded by the 2015 UK Anti-Doping 2015 Rules.

Athlete I, an amateur boxer, was charged with an Article 2.1 ADRV for the presence of MHA. He admitted the charge but argued that the substance had entered his body through the supplement Rocket Fuel which he had ingested in order to make weight for a fight, and that he was unaware it contained a Prohibited 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 first instance Tribunal.

The first instance Tribunal followed the CAS Appeal Decision in *Kutrovsky v ITF* and found, notwithstanding Athlete I's ignorance of the presence of a Prohibited 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 Athlete I was not at significant fault for failing to realise that the supplement contained a Prohibited Substance.

Reasoning and Decision of the Tribunal

UKAD appealed on the basis that the first instance Tribunal had erroneously applied the ADR, and argued that Athlete I could bring himself within Article 10.4, but that he could not bring himself within the No Significant Fault or Negligence provisions of Article 10.5.2.

The Appeal Tribunal concluded that Athlete I did not satisfy the conditions of Article 10.4 and that it was not relevant that Athlete I did not know he was taking a Specified Substance for the purpose of Article 10.4 as such knowledge was not relevant to the commission of the ADRV.

The Appeal Tribunal also concluded that the first instance Tribunal was in error in concluding that Athlete I could satisfy the provisions of Article 10.5.2. The Appeal

Tribunal ruled that, in appropriate circumstances, an Athlete who was unable to rely upon Article 10.4 may be able to fall within Article 10.5.2, but Athlete I failed by a substantial margin to demonstrate that his fault was not significant. This left Athlete I facing the standard two-year period of ineligibility. However, the Appeal Tribunal ruled that, in order to serve justice, the 12-month sanction should stand, although it was made clear this was an act of mercy on its part and entirely exceptional.

Learning points

- Where an athlete tests positive for a Specified Substance, a reduced sanction under Article 10.4 will only be available where the athlete can establish they did not intend to enhance their sport performance by use of the supplement/product within which the Specified Substance was contained.
- Ignorance of the fact that a supplement contains a Specified Substance will not be accepted, of itself, as an argument for lack of intent to enhance sport performance.
- The role of a National Anti-Doping Organisation (NADO) is to apply the provisions of the WADA Code as drafted to ensure consistency in its application and interpretation supra-nationally. It is not the role of a NADO to apply its own view as to the intent of a provision of the WADA Code.