

Case 3 – Presence Prohibited Substance – Appeal of Case 2 Decision

Key words

Presence; Use; IAAF Rule 32; Article 2.1; Article 2.2; Testosterone; Clenbuterol; Integrity of Testing Process; Multiple Use; Aggravating Circumstance; Article 10.6; Appeal; [Doping](#)

Summary

Athlete N appealed to the National Anti-Doping Panel (NADP), in accordance with the IAAF Anti-Doping Rules as adopted by UK Athletics, following an NADP first instance decision which imposed a sanction of four years ineligibility as a result of positive findings for testosterone and clenbuterol. Athlete N's appeal challenged the validity of the testing process and the findings of the first instance Tribunal. The Appeal Tribunal rejected all of the arguments put forward by Athlete N and dismissed the appeal, upholding the sanction of four years ineligibility.

Background Facts

Athlete N, a sprinter, was charged with presence and use ADRVs under IAAF Anti-Doping Rules 32.2(a) and 32.2(b) following an Adverse Analytical Finding for the presence of testosterone and clenbuterol. Athlete N denied the charges and asserted that, since she knew herself to be innocent, somebody else must be responsible for the contamination of the sample. Athlete N alleged that there were a number of departures from recognised testing procedures, and alleged that an (unidentified) jealous competitor may have found means to contaminate the sample, and/or that there may have been wilful or careless contamination during the Doping Control

process. The first instance Tribunal rejected Athlete N's claims and found Aggravating Circumstances to be present, namely that Prohibited Substances had been ingested on multiple occasions and that Athlete N had made serious allegations placing blame upon others which were found to be untrue. A sanction of four years ineligibility was imposed.

Reasoning and Decision of the Tribunal

Athlete N's notice of appeal argued that the first instance Tribunal had misdirected itself on certain aspects, was wrong in the conclusions it drew and gave inappropriate weight to certain pieces of evidence. The Appeal Tribunal issued a directions order specifying dates by which each party should submit their submissions and evidence. Athlete N did not make any submissions by the prescribed date, but instead submitted fresh grounds of appeal and evidence one day before the Appeal Hearing, making various allegations regarding the validity of the testing process and the findings of the first instance Tribunal.

The Appeal Tribunal rejected all the arguments put forward by Athlete N. The Appeal Tribunal found that Athlete N was opportunistic, inconsistent and keen to advance any argument which might conceivably result in a dismissal of the charges framed against her. The appeal was dismissed.

Learning points

- Appeals which seek to challenge the integrity of the testing process will present a high hurdle for athletes to overcome.
- Tribunals may find that aggravating circumstances exist where an athlete attempts to explain doping charges by alleging misconduct by others without adducing evidence to corroborate their allegations.