

DISCIPLINARY HEARING

Before

THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL

Between

JAMAICA ANTI-DOPING COMMISSION

Complainant

And

KENNETH EDWARDS

Respondent

For the Complainant: Mr. Lackston Robinson

For the Respondent: Mr. Brian Moodie and Miss Danielle Chai.

BACKGROUND

1. The Respondent Mr. Kenneth Edwards has represented Jamaica in the sport of Taekwondo.
2. Mr. Edwards was selected by the Jamaica Anti-Doping Commission (JADCO) for out-of-competition testing and the testing took place on August 16, 2013 at premises 56 Westminster Road, Kingston 10.
3. The testing was carried out by Dr. Paul Wright, a Doping Control Officer, who obtained a sample of urine from the Respondent.
4. The urine sample was sent for testing to a WADA accredited laboratory in Canada and a Certificate was issued by Professor Christiane Ayotte, the Director of the Doping Control laboratory on September 11, 2013.

5. The Certificate revealed an adverse analytical finding for the aforementioned sample and that the substance Hydrochlorothiazide in the A sample estimated at 1.3 ng/ml, SG 1.031, and having been so notified, the Respondent requested an analysis of his B sample.
6. The B sample was analysed at the said laboratory and a Certificate was issued by Professor Ayotte on 6th October, 2013 confirming the presence of Hydrochlorothiazide (HCTZ) in the Respondent's urine sample.
7. The Respondent was so notified on October 12, 2013, and JADCO referred the matter of an anti-doping rule violation to the Jamaica Anti-Doping Disciplinary Panel.
8. The hearing in this matter commenced before the Jamaica Anti-Doping Disciplinary Panel on January 21, 2014.
9. The Respondent did not challenge the anti-doping rule violation but sought to seek an elimination or reduction of the sanction under Articles 10.4 and 10.5.1 of the JADCO Anti-Doping Rules.
10. The evidence disclosed inter alia:
 - (a) That on 9th August, 2013 the Respondent participated in a demonstration at the Jamaica Defence Force (JDF) and was injured while using his hand to break boards.
 - (b) That the Respondent tried to use his own remedies to deal with the injury, but after several days poor signs of healing were seen.
 - (c) That on the 14th August, 2013, the Respondent attended the Kingston Public Hospital to receive a free X-ray which showed that his hand had suffered a severe sprain.
 - (d) That the Respondent received a prescription for antibiotics and anti-inflammatory medication.
 - (e) That the prescription was filled at Megamart Pharmacy on Waterloo Road on 15th August, 2013 at 8:30 p.m.
 - (f) That the Respondent took the medication at 11:30 p.m. that same night.

- (g) That at about 6 a.m. the following morning the Respondent received an out-of-competition test by Doping Control personnel from JADCO, headed by Dr. Paul Wright.
 - (h) That the testing procedures were not challenged by the Respondent.
 - (i) That the Respondent caused the empty “snap cap” bottle which he had received from Megamart Pharmacy and from which he had consumed CIPROFLOXAMIN, the medication to be forwarded to Caritox, a laboratory headed by Professor Wayne McLaughlin at the University of the West Indies.
 - (j) That Professor McLaughlin analysed residue in the bottle and found traces of Hydrochlorothiazide.
 - (k) That another prescription was filled at the said Megamart Pharmacy by his Attorneys which was also analysed by Professor McLaughlin and was also positive for Hydrochlorothiazide (HCTZ).
 - (l) That Professor McLaughlin purchased Ciprofloxamin from the University of the West Indies Health Centre as a reference sample.
 - (m) That that reference sample was received in a “blister pack” where the tablets are individually sealed in aluminium foils that you press out to get the tablets.
 - (n) That that Ciprofloxamin sample was manufactured by Fourrts, a different Manufacturer from those received at Megamart Pharmacy.
 - (o) Another reference sample of Ciprofloxamin was purchased by Professor McLaughlin from Dean’s Pharmacy in Papine, under directions from him to dispense the tablets from a new bottle, and poured directly into a container, instead of pouring unto a dispensing board.
 - (p) That both reference samples were analysed by Professor McLaughlin and the results were negative for HCTZ.
13. The evidence of Professor McLaughlin was intended to show that it was possible for the prescription obtained by the Respondent to have been contaminated at the Megamart Pharmacy or in the manufacturing process.

14. Professor McLaughlin opined that the low level of HCTZ was more consistent with contamination.

15. Article 10.4 of the JADCO Rules provides:

“Where an Athlete or other person can establish how a Specified Substance entered his or her body or came into his or her possession and that such specified substance was not intended to enhance the athlete’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future events; and at a maximum, two (2) years’ Ineligibility”.

16. Article 10.4 also provides:

“To justify any elimination or reduction, the Athlete or other person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence or intent to enhance sport performance or mask the use of a performance-enhancing substance.

The Athlete’s or other person’s degree of fault shall be the criteria considered in assessing any reduction of the period of Ineligibility”.

17. The Respondent also submitted that his sanction should be eliminated under Article 10.5.1.

18. In order to succeed under Article 10.5.1, the Athlete must show exceptional circumstances.

19. There were no exceptional circumstances in this matter.

20. We would have to now consider whether the Athlete established to the hearing panel’s comfortable satisfaction that the period of Ineligibility should be reduced or eliminated.

21. Mr. Brian Moodie and Miss Danielle Chai for the Respondent submitted that the period should be eliminated or reduced under Article 10.5.1, and in the alternative that Article 10.4 should be considered.

22. Mr. Moodie submitted that the violation occurred through no fault of the Respondent and that he had no intention to cheat.

23. Miss Chai contended that the Respondent should be able to rely on Article 10.5.1 as the Respondent had no fault or negligence.


24. She referred to the WADA Code and the CAS case of James Armstrong v World Curling Federation (WCF), award of 21 September 2012.
25. Miss Chai referred to paragraph 8.15 which stated that if the Athlete is found to bear no fault at all, he cannot be sanctioned, not even with a reprimand.
26. She further submitted that he acted with utmost caution.
27. Miss Chai in her submission in relation to Article 10.4 referred to the Shelly-Ann Fraser case as to the sanction.
28. She relied on the CAS case of FINA v Cielo and CBDA where the sanction was a reprimand.
29. Miss Chai further referred to the CAS case of Union Cycliste Internationale (UCI) v Alexander Kolobnev and Russian Cycling Federation.
30. She contended that the cyclist although tested positive for HCTZ was given a reprimand, and that contamination was pleaded as in the case of the Respondent.
31. Mr. Lackston Robinson for JADCO submitted that Article 10.5.1 could not be used.
32. He submitted that on the evidence the applicable provision would be Article 10.4 which were the equivalent provisions in the Cielo and Kolobnev cases.
33. Mr. Robinson submitted that in those cases a reprimand was the sanction based on those circumstances.
34. Having considered the evidence and the submissions, the Panel is of the view that Article 10.5.1 is not applicable based on the strict liability provisions of The Anti-Doping Rules.
35. Furthermore there were no exceptional circumstances in this case.
36. As far as Article 10.4 is concerned, the Respondent has established to the Panel's comfortable satisfaction that he did not intend to enhance sport performance or to take the substance to mask the use of a performance enhancing substance.
37. The Panel took into consideration the Athlete's degree of fault and noted the minimal amount of the substance and the evidence of Prof. McLaughlin in that regard.
38. The Panel noted that the substance was not a quantitative substance.
39. In all the circumstances the Panel imposed a reprimand without any period of Ineligibility.

By THE JAMAICA ANTI-DOPING DISCIPLINARY PANEL

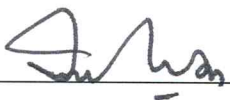
5th day of May, 2014

PER:  _____

Kent S. Pantry CD, QC - Chairman

PER:  _____

Juliet Cuthbert-Flynn - Member

PER:  _____

Prof. Ivor Crandon - Member