

SPORTS DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

BETWEEN:

THE CANADIAN CENTRE FOR ETHICS IN SPORT

(The “CCES”)

-and-

JASONPREET BAINS

(The “Athlete”)

-and-

U SPORTS

-and-

WORLD ANTI-DOPING AGENCY

(Observer)

GOVERNMENT OF CANADA

(Observer)

ARBITRATOR: Jonathan Fidler

APPEARANCES:

Elizabeth A. Cordonier and Alexandre T. Maltas for CCES

Tara Hahto for U Sports

Jasonpreet Bains – Self-represented

Heard by teleconference August 24th and 28th, 2020

DECISION

OVERVIEW

1. This is a doping case heard pursuant to 2015 Canadian Anti-Doping Program (CADP). I was appointed by the SDRCC as Arbitrator pursuant to the Canadian Sport Dispute Resolution Code.
2. On April 3rd, 2020 a notification was sent by CCES to U Sports advising of an adverse analytical finding by the Athlete.
3. On April 29th, 2020, the Athlete filed a Request for a Doping Hearing.
4. A hearing was held by teleconference on August 24th and 28th, 2020.
5. The Athlete, Jasonpreet Bains has been a competitive wrestler for 11-12 years, since he was ten (10) years old. He has competed for Canada at the World Championships and at the Pan American Championships where he placed second. At the time of the sample collection, he was also a university wrestler.
6. On February 21st, 2020, at the U Sports Championships, he tested positive for Dehydrochloromethyltestosterone, a non-specified substance also known as Turinabol. He says he was not advised of the result until March 9th, 2020.
7. In spite of the length of his career, this was only the second time he had been tested, the first test having taken place two to three weeks earlier. I have heard no evidence of the result of that prior test but, if he had tested positive then, I would assume that fact would have come out as part of the proceedings before me.
8. Although he did not sign a Timely Admission Form, the Athlete concedes the presence of the prohibited substance in his body and the results of the laboratory analysis.
9. The Athlete denies intentionally ingesting the substance and denies any significant fault or negligence. Although he concedes there will be a period of suspension, he asks that it be reduced from the four (4) years proposed by the CCES.

FACTS

10. The Athlete lives with his parents, three brothers, a sister-in-law and his grandmother.
11. His evidence is that he used various legal substances which were permitted under the anti-doping rules, including a protein powder. He keeps these along with his tub in a cupboard in his kitchen. He says he advised all the members of his family not to go into the cupboard or use his things.
12. After being informed of his test result, he investigated the source of the banned substance and found that his brother, Gurpreet, who is a weightlifter who lives with him, was using Turinabol

and went into the cupboard and used the Athlete's tub of powder to mix in the Turinabol for himself.

13. The Athlete testified that he was aware of the risks both physical and getting caught of using drugs and banned substances.
14. He acknowledged receiving anti-doping education multiple times, having completed the CCES' education module for anti-doping and having taken anti-doping quizzes twice. He considers himself quite knowledgeable and educated with respect to doping.
15. The Athlete said he was very careful with what he ate and was aware of the need to be vigilant. He took protein powder one to three times a week when he felt he needed it, either as a shake or mixed with a smoothie.
16. Gurpreet testified that he also had a cupboard beside the Athlete's where he stored his supplements.
17. Although both Gurpreet and the Athlete testified that Gurpreet never told his brother that he was taking a banned substance, the Athlete admitted that he suspected he was. It never occurred to the Athlete to move his supplements out of the kitchen and away from his brother.
18. The Athlete said that the last time he took protein powder was three days before the U Sports Championships. He said the tub was less than half full at that time and he had no concern that the amount in the tub was inconsistent with how often he said he used it.
19. He finished the tub of protein powder about two to three weeks after the U Sports Championships and his mother threw out the tub. He said it did not occur to him that the protein powder was the source of contamination until Gurpreet told him.
20. Gurpreet's evidence was, in essence, that he and his brother used the same type of protein powder and he ran out. He thought his brother was not using his and as he did not want to buy more, mixed the drug into his brother's tub and did not tell him. He was well aware of his brother being an elite athlete.
21. He got the drug from someone at his gym. He knew it was a prohibited substance.
22. He was vague on how much he knew about the drug, how often he took it, what dosage he used and how much he needed to produce the results he wanted. He got most of his information on-line.
23. The CCES called Prof. Christiane Ayotte to give expert evidence. Prof. Ayotte also wrote a report. She is the Director of the Armand-Frappier Santé Biotechnologie Research Centre and was formerly the President of the World Association of Anti-Doping Scientists. She clearly qualifies as an expert on doping.
24. It was her evidence that based on the test results the Athlete had ingested Turinabol, but that it could not have been two or three days before testing, as alleged by the Athlete. Her conclusion was that the last administration of the substance would have been probably several weeks before. When confronted by the report, the Athlete maintained that he last took the protein powder three days before testing.

CADP RULES

25. The CADP rules call for a four-year suspension for the presence of a prohibited substance.
26. Pursuant to Rule 10.2, the Athlete is eligible for a reduction from four years to two years if he can establish that the violation was not intentional. To do that, the onus is on the Athlete to prove both that he did not knowingly take the prohibited substance and there was no significant risk that he manifestly disregarded.
27. Although not required, the CCES submits that in order to prove a lack of intention, the Athlete has to demonstrate how the prohibited substance entered his system. The CCES filed case law in support of this submission.
28. Pursuant to Rule 10.5.2, if the Tribunal finds that the violation was not intentional, the period of suspension may be eliminated or reduced below two years if the Athlete can establish how the prohibited substance entered his body and that his conduct in all the circumstances establishes no significant fault or negligence on his part.
29. If I find no significant fault or negligence, I need to assess the Athlete's degree of fault in assessing the sanction.

SUBMISSIONS

30. The Athlete admits that he should have kept his supplements and tub in his room. He called it a "dumb mistake". He denies any intent and asks for a reduced period of suspension.
31. The CCES submits that the Athlete's and Gurpreet's evidence is not credible. They submit that the Athlete was experienced and educated on the issue of doping and disregarded the risks. He suspected his brother was using banned substances and should have anticipated something might happen. It also submits that, based on Prof. Ayotte's evidence, the Athlete is not being honest on the timing of his taking the drug, which could mean either he was taking it longer or that the protein powder was not the source, insisting that the onus is on the Athlete to prove how the substance entered his body. The CCES asks for the four-year suspension to be confirmed. In the event I find no significant fault or negligence, the CCES suggests an ineligibility period of twenty to twenty-four months.
32. While I may not have listed every argument made by both the Athlete and the CCES, I have considered all arguments made in my decision.

DECISION

33. I must first determine whether the Athlete's violation was intentional or not. In doing so, the onus is on the Athlete to show, on a balance of probabilities, that he did not knowingly take the substance. I therefore have to consider the evidence on how he says the substance entered his body. The Athlete has been wrestling for more than 10 years and has competed at a very high level. He is knowledgeable about the dangers of doping. There is no evidence of him encountering any issue with doping before. Although the CCES has alleged he had motive to cheat, no evidence was led in that regard. I am troubled by Prof. Ayotte's evidence and the Athlete's insistence that he last ingested the powder three days before, but a mistake in timing in this instance is not enough for me to disregard his evidence. I understand the CCES's submission that Dr. Ayotte's evidence could also be taken to show that the substance did not come from the protein powder. No other explanation has been suggested and both the Athlete and his brother have testified as to the contamination of the protein powder. I am prepared to accept that the violation was as a result of the contaminated protein powder.
34. I must now determine whether there was a significant risk that he manifestly disregarded. Knowing the dangers of contamination and having been educated on doping, the Athlete left his tub and supplements in a cupboard in a house being shared by seven people. He also suspected his brother of using banned substances. In his submissions, the Athlete admitted that he should have kept his supplements and tub in his room and that he made a "dumb mistake". Under the circumstances I find that there was a significant risk that the Athlete manifestly disregarded. As such, the Athlete has failed to satisfy the second branch of the test for him to be successful in proving that his actions were not intentional.
35. Since I have found that the Athlete has failed to establish a lack of intention, there is no need to determine whether there was no significant fault or negligence or assess his degree of fault.
36. Accordingly, the Athlete is suspended for a period of four (4) years starting on April 3, 2020, the date on which the CCES imposed a mandatory provisional suspension.

Dated at Toronto September 1st, 2020



Jonathan Fidler
Arbitrator