

INTERNATIONAL SKATING UNION

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Disciplinary Commission

Case No. 2018-05

April 28, 2018

Decision of the ISU Disciplinary Commission

Panel:

- Volker Waldeck, Chair
- Dr. Allan Böhm
- Susan Petricevic.

International Skating Union,
Avenue Juste-Olivier 17, 1006 Lausanne, Switzerland,
represented by its Legal Advisor, Prof. Dr. Michael Geistlinger,

- Complainant -

against

Mr. Da Woon SIN,

- Alleged Offender -

and

Korea Skating Union,

- Interested ISU Member -

Regarding the Violation of the ISU Anti-Doping Rules

I. History of the procedure

On March 19, 2018, the ISU filed a complaint against the Alleged Offender, together with 5 exhibits. On March 20, 2018, the Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. Neither the Alleged Offender nor the Interested Member, Korea Skating Union, filed a statement of reply.

II. Procedural Matters

According to Article 25, Paragraph 10 of the ISU Constitution 2016 and Article 8.1.1 of the ISU Anti-Doping Rules 2015 the Disciplinary Commission has jurisdiction in anti-doping cases.

The present case arises out of three Whereabouts Failures registered within twelve months of the Korean Skater Da Woon Sin belonging to the ISU Registered Testing Pool (RTP) since July 1, 2017.

Prior to this event, on October 30, 2016 the skater, had signed the “Declaration for Competitors and Officials entering ISU Events” for the season 2016/2017. This Declaration states:

“I, the undersigned,

I) accept the ISU Constitution, which establishes an ISU Disciplinary Commission (Article 24) and recognizes the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts (Articles 25 & 26);

VI) am familiar with the ISU Code of Ethics (ISU Communication 1717 or any update of this Communication) as well as ISU Anti-Doping Rules (ISU Communication 1765 & 1800 or any update of these Communications) and also with the current List of Prohibited Substances and Methods and I declare that I will fully comply with such Rules.”

Therefore, the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

III. Facts

The Alleged Offender is member of the Korea Skating Union, which is the Korean Member of the ISU. Mr. Sin has been notified belonging to the ISU RTP on 6 June 2017. The inclusion became effective as of July 1, 2017.

Regarding August 17, 2017, Mr. Sin indicated in ADAMS the address of the Korean Armed Forces Athletic Corps Mungyeong. The daily time-slot for availability was determined at 12:00. The Doping Control Official (DCO) Jung Hee Taek arrived at the gate of the above army facility at 6:00 am at the athlete’s room at 6:15 am, but the Alleged Offender was not there. The DCO stayed until 6:55 am, but the athlete did not arrive. The DCO was told by the hostel officer that

Mr. Sin was at a field-training at the Mokdong Ice rink in Seoul instead. The ISU notified the Skater on the Filing Failure on August 22, 2017 and set a deadline of September 5, 2017 for any comment by the Alleged Offender. Since no comment arrived by this date, the ISU notified the Skater on September 6, 2017, that a Filing Failure will be recorded and that he has the right to ask for an administrative review by September 13, 2017. Since the Alleged Offender did not submit such request within that deadline, the ISU notified Mr. Sin on the recording of the first Filing Failure on 20 September 2017.

For 6 September 2017, Mr. Sin in his information, updated on 5 September 2017, indicated in ADAMS the address of the Korean Armed Forces Athletic Corps Mungyeong. The daily time-slot for availability was determined at 12:00. The DCO Myoung Soo Lee arrived at the athlete's room at the above army facility at 12:00. The door was open, but the Skater was not there. The DCO stayed until 13:05 and tried to call the Alleged Offender three times, but the Skater neither answered the calls, nor showed up. The DCO was told by the executive sergeant major that Mr. Sin was at a field-training at the Mokdong Icerink in Seoul instead. The ISU notified the Skater on the Possible Missed Test on 20 September 2017 and set a deadline of 4 October 2017 for any comment by the Alleged Offender. Since no comment arrived by this date, the ISU notified the Skater on 5 October 2017, that a Missed Test will be recorded and that he has the right to ask for an administrative review by 16 October 2017. Since the Alleged Offender did not submit such request by that deadline, the ISU notified Mr. Sin on the recording of the second Whereabouts Failure (Missed Test) on 23 October 2017.

For 14 November 2017, Mr. Sin indicated in ADAMS the address of the Mokdong Icerink in Seoul. The daily time-slot for availability was determined at 20:00. The DCO Chae Bong Kun arrived at the Mokdong Icerink at 18:45. According to the Unsuccessful Attempt Report Form, the DCO tried to meet the Alleged Offender at the icerink between 18:45 and 21:00. Mr. Billy Gannon (CCES), who based on a contract with the ISU is responsible to organize the logistic of the ISU OOC Testing Plan, forwarded an additional information delivered by KADA, which shows that the unsuccessful attempt took place between 18:45 and 19:55, with a time of completion of the overall mission being at 20:55. The ISU had no further possibility to verify which was the real time and duration of the unsuccessful attempt and, thus, considers the unsuccessful attempt at any event a Whereabouts Failure, which in case the form was correct, was a Missed Test, in case the further information of Mr. Gannon was correct, was a Filing Failure. The DCO, according to his indications on the Unsuccessful Attempt Report Form, was informed by the organizer that the Skater had returned to the hotel after training but could not reach him as he had no mobile-phone number. According to the further information of Mr. Gannon, the DCO did not go to the hotel, because he was informed by intelligence source that Mr. Sin was in the military camp of Mungyeong.

The ISU notified the Skater on the (third) Whereabouts Failure (Possible Missed Test) on 21 November 2017 and set a deadline of 5 December 2017 for any comment by the Alleged Offender. By letter dated 27 November 2017, received by email on 5 December 2017 the Secretary General of the Korea Skating Union (KSU) informed the ISU:

“As a status of delivering a military service since August 2017, Mr. Da Woon Sin has been lawfully unavailable to have a cell phone with him while his military service of 2 years. During the visit of DCO to Mokdong lcerink on 14th November, Mr. Da Woon Sin was indeed training at the Mokdong lcerink (as he inserted on the system), but was having an off-ice training(running) around the Mokdong lcerink due to unavailability of entrance to

the venue (Audi ISU Short Track World Cup; November 13^o1 - 19^o1). At the moment, DCO and Mr. Da Woon Sin were unable to be in touch through the call because of Mr. Da Woon Sin's absence of contact information on ADAMS (his cell phone)."

On 5 December 2017, the ISU asked for more information and pointed at controversial information in its hands. On 7 December 2017, the KSU provided the military team training schedule as evidence, which, however, could not cure the fact of a Whereabouts Failure (obviously Missed Test). The ISU notified this to the Alleged Offender on 12 December 2017 and set a deadline of 19 December 2017 for Mr. Sin to ask for an administrative review. On 20 December 2017, KSU repeated its arguments and quoted the respective provision of the military Security Law forbidding soldiers any communication equipment. KSU asked for consideration and revision of the decision. On the same day, the ISU informed the KSU that irrespective of this law and the fact that Mr. Sin was training around the ice rink, the facts of a Missed Test were given, and all elements fulfilled. On 8 January 2018, a request for confirmation of receipt was sent by the ISU to KSU and on 16 January 2018, the ISU notified the Alleged Offender of his third Whereabouts Failure within a 12 months period.

IV. Motion

The Complainant moves to impose the minimum sanction of one-year ineligibility on the Alleged Offender.

Neither the Alleged Offender nor the Interested Member have submitted a motion.

V. Law

Article 2 ISU Anti-Doping Rules 2015 reads:

The following constitute anti-doping rule violations:

2.4 Whereabouts Failures

Any combination of three missed tests and/or filing failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by a Skater in a Registered Testing Pool.

The Alleged Offender belongs to the ISU Registered Testing Pool (RTP) since July 1, 2017. According to the "International Standards for Testing and Investigation" Annex I 2.1. the ISU has notified the Alleged Offender by letter of June 2017 of

- a. the fact that he has been included in its Registered Testing Pool with effect from July 1, 2017;
- b. the whereabouts requirements with which he must therefore comply;
- c. the Consequences if he fails to comply with those whereabouts requirements.

The twelve-months period for the Alleged Offender started on July 1, 2017. The Alleged Offender committed a Filing Failure on 17 August 2017, a Missed Test on 6 September 2017 and another Missed Test on 14 November 2017. As a result, a combination of three missed tests and/or filing failures within a twelve-month period committed by the Alleged Offender is given. The

whereabouts failures are uncontested. The Alleged Offender has violated Article 2 of the ISU Anti-Doping Rules.

According to Article 10.3.2 of the ISU Anti-Doping Rules, the period of Ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Skater's degree of Fault.

The panel is willing to accept the explanation given by the Skater/his federation for the third Whereabouts Failure and finds that the Fault of the Skater as to this failure consists in having chosen a time-slot which realistically could not be met on his side. He should have moved the time-slot on this day to a time adequate to his availability as a person in military service under military rule. This goes also for the two other Whereabouts Failures where the Alleged Offender could have avoided them if he more reasonably and reflectively considered his unavailability due to his military service. The Panel also takes into consideration that the Alleged Offender was included into the ISU RTP for his first time, that he was unexperienced in handling the ADAMS system and the failures had been committed at an early stage of use of the system. The Panel does not see a pattern of last-minute whereabouts changes or other suspicious conduct. Therefore, the Panel reduces the period of ineligibility from two years to one year.

VI. Decision

1. Da Woon SIN is declared responsible for an Anti-Doping violation.
2. A period of ineligibility of one year, beginning on April 28, 2018, and ending on April 27, 2019 is imposed on Da Woon SIN.
3. The Korea Skating Union has to reimburse the ISU for the costs of the Result Management and the costs of these proceedings.
4. The skater bears his own costs.



Volker Waldeck



Dr. Allan Böhm



Susan Petricevic

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 25 Paragraph 12 and Article 26 of the ISU Constitution 2016.