

Case No. 2019-01

April 3, 2019

Panel: Volker Waldeck, Chair
Albert Hazelhoff
Jean-François Monette

**Final Decision
in the matter of**

International Skating Union,
Avenue Juste-Olivier 17, 1006 Lausanne, Switzerland,
represented by its Legal Advisor, Dr. Béatrice Pfister,

- Complainant -

against

Ms. Anastasia SHAKUN,

- Alleged Offender -

and

Figure Skating Federation of Russia

- Interested ISU Member -

Regarding the alleged violation of the ISU Anti-Doping Rules

I. History of the procedure

On March 12, 2019, the Complainant filed a Complaint against the Alleged Offender, together with 8 exhibits. On March 13, 2019 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. The Alleged Offender filed a statement of reply on March 15, 2019.

II. Procedural Matters

According to Article 25, Paragraph 10 of the ISU Constitution 2018 and Article 8.1.1 of the ISU Anti-Doping Rules 2015 the Disciplinary Commission has jurisdiction in anti-doping cases arising out of ISU Testing or Testing at International Events or Competitions. The present case arises out of testing of the Alleged Offender at the 2018 Pavel Roman Memorial, an International Competition in Ice Dancing published on the ISU Calendar, i.e. of testing at an International Event. Therefore, the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

III. Facts

1. The Alleged Offender is a national level skater and member of the Figure Skating Federation of Russia (FSFR). Together with her partner she participated at the 2018 Pavel Roman Memorial which was held in Olomouc, Czech Republic on November 9 – 11, 2018. The couple placed 1st in the category Senior in Rhythm Dance, Free Dance and the final result.
2. Following an In-Competition Anti-doping test initiated by the Czech National Anti-Doping Organization (CADC) and carried out on November 10, 2018, the ISU received information from CADC of an adverse analytical finding regarding the Alleged Offender's Sample number 4343923 on December 4, 2018. The sample had been analysed at the Institute of Doping Analysis and Sports Biochemistry (IDAS), Germany, and was found to contain furosemide.
3. By letter of the Complainant dated December 14, 2018 the Alleged Offender and the Figure Skating Federation of Russia were informed about the Adverse Analytical Finding and the rights to submit a written explanation to the ISU Director General about the overall circumstances of the case or to dispute the ISU assertion that an anti-doping rule violation has occurred within 15 days and to request that the B Sample be analysed.

The Alleged Offender was further advised that according to Articles 10.6.3 and 10.6.1 ISU Anti-Doping Rules 2015, she had the opportunity to promptly admit the anti-doping rule violation, consequently, to request a reduction of the period of ineligibility and to cooperate and provide substantial assistance in discovering or establishing anti-doping rule violations.

4. On January 11, 2019, the Figure Skating Federation of Russia informed that the Alleged Offender had been suspended from practices and participation in all competition and forwarded to the Complainant her letter. In this letter, the Alleged Offender renounced from the analysis of her B- Sample and explained that she had taken furosemide upon advice of a pharmacy shortly before the competition because of an eye swelling, thereby forgetting that it was on the Prohibited List.

IV. Law

1. Furosemide, as uncontestedly found present in the Alleged Offender's bodily specimen, is a specific substance prohibited at all times, according to the 2018 Prohibited List of the World Anti-Doping Agency (WADA) under class "S5. Diuretics and Masking Agents".
2. According to Article 2.1. of the ISU Anti-Doping Rules 2015, the presence of a Prohibited Substance in a Skater's bodily specimen constitutes an Anti-doping Rule violation, unless a Therapeutic Use Exemption (TUE) for the otherwise Prohibited Substance has been granted in accordance with Article F of the ISU Anti-Doping Procedures.
3. According to Article 2 of the ISU Anti-Doping Rules, Skaters are responsible for knowing what constitutes an Anti-doping Rule violation and the substances and methods which have been included in the Prohibited List. Under Article 2.1.1, it is each Skater's personal duty to ensure that no Prohibited Substance enters his/her body. Skaters are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.
4. It is undisputed that the Alleged Offender committed an anti-doping rule violation within the meaning of Article 2.1 of the ISU Anti-Doping Rules.
5. Article 10.2 of the ISU Anti-Doping Rules 2015 sets out the period of ineligibility that must be imposed on the Alleged Offender.
6. As stated before, furosemide belongs to class S5 of the 2018 WADA Prohibited List and, thus, is a Specified Substance under the meaning of Article 10.2 of the ISU Anti-Doping Rules.
7. According to Articles 10.2.1.2 and 10.2.2. of the ISU Anti-Doping Rules, the period of Ineligibility shall be two years, unless the Complainant can establish that the Anti-Doping Rule Violation was intentional.
8. Based on the credible explanation given by the Alleged Offender provided in Exhibit 8, and the fact that the Complainant does not find itself to be able to establish that the Anti-Doping Rule Violation happened intentionally, as set out in its Complaint, a two years Ineligibility is to be imposed.
9. Any reduction of the Ineligibility period must then follow the criteria set out under Article 10.4 of the ISU Anti-Doping Rules (No Fault or Negligence), or Article 10.5 (No Significant Fault or Negligence).
10. The Alleged Offender provided explanation where she had taken the substance for medical reasons and under advice given in a pharmacy, thereby forgetting that it was on the Prohibited List. Therefore, the Panel reaches the consideration made by the Complainant, where Article 10.5 should apply, to the exclusion of Article 10.4.
11. According to Article 10.5.1.1., depending on the seriousness of the violation and the Alleged Offender's degree of fault, a sanction ranging from a Reprimand to a two years Ineligibility can be imposed.
12. The Complainant considered a period of Ineligibility of one year, i.e. half of the standard period for Specified Substances, as adequate and proportionate to the degree of Fault of the Skater.
13. On March 15, 2019, the Alleged Offender did not oppose to the consideration made by the Complainant regarding the suggested period of Ineligibility, nor has provided any further explanation or facts that may have guided the Panel to a different finding.
14. The Ineligibility period shall start according to Article 10.11 of the ISU Anti-Doping Rules on the date Ineligibility is accepted or otherwise imposed.

15. Upon having been confronted by the Complainant, the Alleged Offender promptly and openly admitted the asserted Anti-Doping Rule violation before competing again. Thus, Article 10.11.2 of the ISU Anti-Doping Rules on Timely Admission must apply.
16. The Panel does not follow the Complainant's motion to start the period of Ineligibility from the moment when the Russian Figure Skating Union suspended the Skater.
17. According to Article 10.11.2 of the ISU Anti-Doping Rules, the period of ineligibility should start as early as the date of the sample collection, i.e. in this case November 10, 2018.
18. According to Article 9 of the ISU Anti-Doping Rules, a violation in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of any medals, points and prizes.
19. Article 11.1 of the ISU Anti-Doping Rules states that a team shall be disqualified from that competition, if a competing member of the team is found to have committed a violation under the ISU Anti-Doping Rules. The Alleged Offender competed at the ice dance event at the 2018 Pavel Roman Memorial as member of the Ice Dance team . An ice dance couple is considered to be a team as stated in Article 11.1.
20. Therefore, the competitive results of the ice dance couple obtained at the 2018 Pavel Roman Memorial, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

V. Costs

1. According to Article 12.2 of the ISU Anti-Doping Rules 2018, the ISU Member shall be obligated to reimburse the ISU for all costs (including but not limited to laboratory fees, hearing and travel expenses) related to a violation of these Anti-Doping Rules committed by a skater affiliated with that member. Therefore, the costs of these proceedings, including the laboratory fees of the Anti-Doping testing, must be borne by the Interested ISU Member - Figure Skating Federation of Russia.
2. The Alleged Offender has to bear her own costs.

Based on the above considerations, the ISU Disciplinary Commission rules as follows:

Decision

1. Anastasia SHAKUN is declared responsible for an Anti-Doping violation, committed on November 10, 2018, at the 2018 Pavel Roman Memorial in Olomouc, Czech Republic.
2. A period of ineligibility of one (1) year, beginning on November 10, 2018 and ending on November 9, 2019, is imposed on Anastasia SHAKUN.
3. The results of the Alleged Offender and of the Ice Dance team S/R obtained at the 2018 Pavel Roman Memorial are automatically disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.
4. The Figure Skating Federation of Russia must reimburse the ISU for the costs of these proceedings and the laboratory fees of the Anti-Doping testing.
5. The skater Anastasia SHAKUN bears her own costs.



Volker Waldeck



Albert Hazelhoff



Jean-François Monette

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 2018.