

INTERNATIONAL SKATING UNION

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Case No. 2013-02

December 27, 2013

DECISION

of the

ISU Disciplinary Commission

Panel: Volker Waldeck, Chair
Fred Benjamin
Dr. Allan Böhm

In the matter of

International Skating Union, Chemin de Primrose 2, 1007 Lausanne, Switzerland,
represented by its Legal Advisor, Dr. Béatrice Pfister,

- Complainant -

against

Ms Oksana Nagalati,

- Alleged Offender -

and

The Figure Skating Federation of Russia,

- Interested Member -

Concerning the alleged violation of the ISU Anti-Doping Rules

I. History of the procedure

On November 4, 2013, the ISU filed a complaint against the Alleged Offender, together with 8 exhibits. On November 6, 2013 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 November 18, 2013.

II. Procedural Matters

According to Article 24, Paragraph 10 of the ISU Constitution 2012 and Article 8.1.1 of the ISU Anti-Doping Rules 2012 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 at the ISU Junior Grand Prix of Figure Skating in Kosice, Slovakia, i.e. of testing at an International Event. Therefore the ISU Disciplinary Commission has jurisdiction to hear and decide this case.

III. Facts

The Alleged Offender is a member of the Russian Figure Skating Federation who participated at the 2013 ISU Junior Grand Prix of Figure Skating in Kosice, Slovakia.

Following an in-competition Anti-Doping test carried out on September 14, 2013, the ISU received an adverse analytical finding for sample 2805449 from the Alleged Offender. Said sample was found to contain "Furosemide", which belongs to class S5 (Diuretics and Other Masking Agents) of the 2013 WADA List of Prohibited Substances and Methods.

The Alleged Offender had not declared having taken Furosemide on her Doping Control Form, while she indicated the intake of stimol, red kicks (Multipower), Guarana and Suprodyn.

By letter of October 2, 2013, the Interested ISU Member and the Alleged Offender were informed of the positive finding and requested to submit their written explanations within 15 days of notification. Further they were reminded that the Alleged Offender has the right to request that the B sample be analyzed.

In her statement dated October 8, 2013 (date missing in the translation) the Alleged Offender explained that she had used "Kagocel" on September 7, 2013, ordered from a doctor because of an upper respiratory infection and admitted that on September 10, 2013 she had taken one pill of Furosemide, following the advice of her mother's family doctor, because of an oedema of face and body. Further the Alleged Offender stated that she had forgotten that Furosemide is on the WADA prohibited list, acknowledged her fault, asked to forgive her and guaranteed that she would take medicine only after agreement with a sports doctor in the future. She did not request to have the B sample analyzed.

In his letter of October 16, 2013, the President of the Interested ISU Member stated that the Figure Skating Federation of Russia had conducted an investigation which confirmed the Alleged Offender's hypostases (oedema). Further the President of the Interested ISU Member informed that the Executive Board of the Figure Skating Federation of Russia had disqualified the Alleged Offender from participation in national competitions for a period of 6 months, starting from September 14, 2013.

On October 29, 2013 the Interested ISU Member was requested to cancel its decision due to lack of jurisdiction under Art. 24 Paragraph 10 of the ISU Constitution and Art. 8.1.1 of the ISU Anti-Doping Rules. On October 31, 2013 the Interested ISU Member confirmed the cancellation of the decision of its Executive Board.

By email November 18, 2013, the Alleged Offender admitted to the accusations and “guaranteed strict observance of all Anti-Doping Rules in future”. She waived the right of an oral hearing.

IV. Law

1. Furosemide, as uncontestedly found present in the Alleged Offender's bodily specimen, is contained in the 2013 Prohibited List of the World Anti-Doping Agency (WADA) under class “S5. Diuretics and other Masking Agents”.

2. According to Article 2.1 of the ISU Anti-Doping Rules 2012, 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 letter D of the ISU Anti-Doping procedures. The Alleged Offender had neither requested a Therapeutic Use Exemption for Furosemide nor had she declared having taken this medication on her doping control form.

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. Article 2 Para 2.1.1 says that it is each Skater's personal duty to ensure that no prohibited substance enters his or her body and that Skaters are responsible for any prohibited substance or its metabolites or markers found to be present in their samples.

The Alleged Offender confirmed that she has taken the medicine “Kagocel” on advice of her physician for the treatment of a respiratory disease, and that she has taken one pill of Furosemide on advice of her mother’s family doctor because of oedema of face and body.

4. It is undisputed that the Alleged Offender committed an anti-doping rule violation within the meaning of Article 2 of the ISU Rules. According to Article 10.2 of the ISU Rules, such a violation is sanctioned with a two-year period of ineligibility, unless the conditions for eliminating or reducing this period, as provided in Articles 10.4 and 10.5, are met.

5. As stated above, Furosemide is a Prohibited Substance which appears in category “S5. Diuretics and other Masking Agents” on the 2013 Prohibited List of the WADA Code. According to Article 10.4 of the ISU Anti-Doping Rules 2012 an elimination or reduction of the period of ineligibility in cases of specified substances under specific circumstances may be conceded. Article 10.4 has two requirements:

1. The skater must establish how the Specified Substance entered her body.
2. Such Specified Substance was not intended to enhance the skater’s sport performance or mask the use of a performance-enhancing substance.

Regarding the first condition, the commentary to Article 10.4 of the ISU Rules provides that “*the skater may establish how the Specified Substance entered the body by a balance of probability*”. In other words, a panel should simply find the explanation of a skater concerning the presence of a Specified Substance more probable than not.

The skater has admitted to have taken “Kagocel” on September 7, 2013. Kagocel, mainly distributed in Russia, is an antiviral drug used for prevention and treatment of influenza and other viral infections, as well as for treatment of herpesviral infection (see: <http://kagocel.de>). But Kagocel does not contain Furosemide.

The skater further admitted to have taken Furosemide on September 10, 2013, on advice of her mother's doctor, because she had an oedema of face and body. "Furosemide" is a loop diuretic used in the treatment of congestive heart failure and oedema (<http://en.wikipedia.org/wiki/Furosemide>). The explanation of the skater concerning the presence of Furosemide in order to treat the edema seems to be credible.

The skater has explained that she had taken Furosemide due to a description of her mother's doctor. Thus she has established how the specified substance entered her body. The first requirement of Article 10.4. is met.

The second requirement, that Furosemide was not intended to enhance the skater's sport performance or mask the use of a performance-enhancing substance is also met. The panel believes that the purpose of the medication of Furosemide was to cure the oedema of her face and body.

6. The general period of ineligibility of two years can be reduced according to Article 10.4 of the ISU Anti-Doping Rules down to a reprimand or no sanction in case that the skater bears no fault or negligence. The skater is a junior skater of 17 years only. But she belongs to the Russian team of international skaters competing at the ISU Junior Grand Prix Series. Skaters at that level use to be familiar with the anti-doping rules and learn to ask their team physician prior to taking any unknown medication which could be on the doping list. The Alleged Offender should not have taken Furosemide on advice of a doctor who has no experience in anti-doping rules. It was the negligence of the skater to rely upon a physician other than her team doctor. Therefore the panel can reduce the period of ineligibility to one year only.

7. The ineligibility starts according to Article 10.9 of the ISU Anti-Doping Rules 2012. In her letter of October 8, 2013, the skater explained how the prohibited substance entered her body after she has been confronted with the alleged Anti-Doping Rule violation. According to Article 10.9.2 ISU Anti Doping Rules the period of ineligibility may start as early as the date of sample collection, i.e. in this case September 14, 2013. The period of ineligibility will end on September 13, 2014.

8. According to Article 9 the violation of the ISU Anti-Doping Rules 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. Article 11.1 states, that a team shall be disqualified from that competition, if a competing member of the team is found to have committed a violation of the ISU Anti-Doping Rules. The Alleged Offender competed at the pair's event in Kosice. A figure skating pair is considered to be a team as stated in Article 11.1.

Therefore the competitive results of the couple Oksana Nagalati / Maxim Bobrov obtained from September 13, 2013 (Short Program) to September 14, 2013 (Free Skating Program), at the ISU Junior Grand Prix of Figure Skating in Kosice, Slovakia, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

V. Costs

According to Article 12.2 of the ISU Anti-Doping Rules 2012 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, have to be borne by the Figure Skating Federation of Russia.

The skater has to bear her own costs.

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

Decision

1. Oksana Nagalati is declared responsible for an Anti-Doping violation, committed on September 14, 2013, at the ISU Junior Grand Prix of Figure Skating in Kosice, Slovakia.
2. A period of ineligibility of one year, beginning on September 14, 2013 and ending on September 13, 2014, is imposed on Oksana Nagalati.
3. The competitive results of the couple Oksana Nagalati / Maxim Bobrov obtained from September 13, 2013 (Short Program) to September 14, 2013 (Free Skating Program), at the ISU Junior Grand Prix of Figure Skating in Kosice, Slovakia, are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
4. The Figure Skating Federation of Russia has to reimburse the ISU for the costs of these proceedings and the laboratory fees of the Anti-Doping testing.
5. The skater bears her own costs.

December 27, 2013



Volker Waldeck



Fred Benjamin



Dr. Allan Böhm