

INTERNATIONAL SKATING UNION

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ISU Disciplinary Commission

Case No. 2017-04

March 20, 2017

Decision of the ISU Disciplinary Commission

Panel:

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

In the matter of

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

- Complainant

against

Ms. Jiwoo Park,
Republic of Korea,

- Alleged Offender -

and

Korea Skating Union,

- Interested ISU Member –

Regarding the Violation of the ISU Anti-Doping Rules

I. History of the procedure

On January 31, 2017, the ISU filed a complaint against the Alleged Offender, together with 9 exhibits. On February 3, 2017, 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 Interested Member, Korea Skating Union, filed a statement of reply on behalf of the Alleged Offender on February 14, 2017.

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 arising out of ISU Testing or Testing at International Events or Competitions.

The present case arises out of testing at the ISU World Cup Speed Skating, Harbin, China, which took place on November 13, 2016, i.e. of testing at an International Event.

Prior to this event, on November 11, 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 Ms. Jiwoo Park, Member of the Korea Skating Union, which is the Korean Member of the ISU. Ms. Park participated at the ISU World Cup Speed Skating in Harbin, China, on November 11 – 13, 2016.

On November 13, 2016, Ms. Park, who is an International Level Skater included in the ISU Testing Pool, was tested in-competition at 20:07 hr, after she had finished the Ladies Mass Start. Her Sample with the number 6209061 was tested at the National Anti- Doping Laboratory

Beijing, which on December 6, 2016 reported in ADAMS the adverse analytical finding for clenbuterol. According to the 2016 WADA Prohibited List, clenbuterol belongs to class S1 Anabolic Agents, para 2: Other Anabolic Agents. Upon request of the ISU the laboratory specified that the estimated amount of clenbuterol found was 0.08 ng/ml, which is slightly higher than the limit of detection, which is 0.05 ng/ml. Upon question by the ISU, the laboratory also confirmed that it was likely that this concentration of clenbuterol came from food contamination.

The ISU, having witnessed two national Chinese clenbuterol cases of an even slightly higher concentration which were evaluated and finally found as emanating from food contamination in the seasons 2015/16 and 2016/17, decided to ask the Skater for an explanation in writing before provisionally suspending her. By letter of the ISU dated December 23, 2016, Ms. Park was informed on her right to, within 15 days of that notification, 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 had occurred.

By the same letter, Ms. Park was reminded of her right to request that the B Sample be analyzed within 4 days of that notification in order that respective arrangements could be made with the Beijing laboratory as soon as possible. Ms. Park was advised that, if required, the analysis of the B sample would be carried out at a time determined by the ISU in the Beijing laboratory and might be supervised by an ISU Medical Advisor or representative. Ms. Park or her representative, as well as a representative of the Korea Skating Union would be allowed to attend the B sample opening and analysis in accordance with the International Standard for Laboratories at their expense, if such analysis was requested.

Ms. Park was further informed that following the analysis of the B sample, if such analysis was requested, she had the right to request copies of the A and B Sample Laboratory Documentation Package, which includes information as required by the International Standard for Laboratories.

If there was no request for opening the B sample, this would be considered as a waiver by Ms. Park of her respective right.

In this letter, Ms. Park was also advised that according to Articles 10.6.3 and 10.6.1 ISU Anti-Doing Rules, she had the opportunity to promptly admit the anti-doping rule violation and consequently request the reduction of the period of ineligibility; she also had the opportunity to cooperate and provide substantial assistance in discovering or establishing anti-doping rule violations.

By letter dated 30 December 2016, the Korea Skating Union requested the ISU on Ms. Park's behalf to have the B Sample opened and advised that neither the Skater, nor the Korea Skating Union understood how it could have given an adverse analytical finding. An emergency meeting with the national Speed Skating team's coaches, Ms. Park, and her parents was held. The Korea Skating Union informed the ISU, that during the National Single Distances Speed Skating Championships the Korea Anti-Doping Agency conducted an Anti-Doping test on October 28, 2016 and the result for Ms. Park was negative.

On January 13, 2017, the Korea Skating Union together with Ms. Park filed a letter called "Statement of Appeal" to the ISU where they mentioned that there have been many cases of meat contamination reported from China and that the ISU was aware of this. They advised that Ms. Park only ate meals in the official competition hotel during the Harbin World Cup and confirmed that she never had consumed any doping related medicine or used other methods. To

cause this result. Since she had tested as negative on October 28, 2016 and given the small amount of clenbuterol found in her sample taken on November 13, 2016, *“it is hard to understand and admit that she took a Doping medicine or other methods only within 10 days for the World Cup Speed Skating in China.”* The Korea Skating Union and Ms. Park referred to 2010, when at the Japan Cup Cycle Road Race one of the participating cyclists was found with clenbuterol after having been to China for 3 days before entering Japan. In China he had participated in the Tour de Beijing. The clenbuterol had come from him having eaten contaminated meat in China. In that case the rider was not sanctioned. The Korea Skating Union and Ms. Park also referred to USADA and UKAD to ask if there were any other such cases from other international competitions in China.

On January 16, 2017, the Beijing Laboratory informed the ISU that the analysis of the B Sample confirmed the results of the A Sample, disclosing by email of January 17, 2017 that the estimated concentration of clenbuterol was 0,09 ng/ml. Given this result, the explanation of the Korea Skating Union together with Ms. Park, and considering the recent national Chinese cases, the ISU does not impose a provisional suspension on the Skater, holding that it is very likely that the adverse analytical finding results from food contamination.

IV. Motion

The Complainant moves not to impose any sanction on the Alleged Offender besides the automatic disqualification of the results obtained at the ISU World Cup Speed Skating in Harbin, China, on November 11 – 13, 2016.

The Alleged Offender and the Korea Skating Union “accepted the results of ISU”.

V. Law

According to Article 2.1.1 of the ISU Anti-Doping Rules, it is each Skater’s personal duty to ensure that no Prohibited Substance enters her body. Skaters are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Skater’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1 of the ISU Anti-Doping Rules.

According to Article 2.1.2 of the ISU Anti-Doping Rules, sufficient proof of an anti-doping rule violation under Article 2.1 of the ISU Anti-Doping Rules is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Skater’s A Sample, where the Skater’s B Sample is analyzed and the analysis of the Skater’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Skater’s A Sample.

According to Article 2.1.3 ISU Anti-Doping Rules, excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Skater’s Sample shall constitute an anti-doping rule violation. For clenbuterol no quantitative threshold has been specifically identified in the Prohibited List.

From the above it follows that the Alleged Offender is responsible for the Prohibited Substance found to be present in her samples. Accordingly, she has to be declared having committed an anti-doping rule violation on November 13, 2016.

According to Articles 10.2, 10.2.1 and 10.2.1.1 of the ISU Anti-Doping Rules, the period of Ineligibility imposed for a violation of Article 2.1 (Presence of a Prohibited Substance) shall be four years, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5, or 10.6, if the anti-doping rule violation does not involve a Specified Substance, unless the Skater or other Person can establish that the anti-doping rule violation was not intentional.

In the case at hand, the Complainant is willing to accept the explanation given by the Skater and her federation that the Prohibited Substance results from food contamination. According to WADA information on the status of clenbuterol, it *“is possible that under certain circumstance the presence of a low level of clenbuterol in an athlete sample can be the result of food contamination. However, each case is different and all elements need to be taken into account, along with the context of the case.”*

The Complainant is ready to consider that the competition took place in China and that the Alleged Offender stated she had fully relied on the supplied food at the official competition hotel during the competition. The present case coincides with two Chinese cases of January 2016 and November 2016 reported to the ISU, where CHINADA based on food analysis concluded that contaminated meat must have been the source of clenbuterol (0,15 ng/ml and 0,2 ng/ml respectively) in the Chinese Skaters' samples. CHINADA pointed to the widespread contamination of meat in China. CHINADA stated that the organizers of events try to avoid supplying athletes with contaminated meat as far as possible, but cannot fully achieve so. The Alleged Offender has no access to laboratories or other institutions in China that could provide a corroborative analysis of meat as eaten in Harbin during the World Cup. The Alleged Offender, thus, given the context of the case and all elements that can be taken into consideration, in the Complainant's opinion provided an explanation that satisfied the Complainant.

According to Article 10.5.1.2 of the ISU Anti-Doping Rules, *“in cases where the Skater or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Skater's or other Person's degree or Fault.”*

In the case at hand, the Complainant cannot find any fault or negligence by the Alleged Offender. The Alleged Offender, due to the prohibition of importing food into China, could not do more than restrict herself to the consumption of the meat provided by the organizer. The Complainant, thus, holds that Article 10.4 of the ISU Anti-Doping Rules shall apply, which reads as follows: *“If a Skater or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.”*

Due to the fact that an anti-doping rule violation has been committed in connection with an In-Competition-test Article 9 of the ISU Anti-Doping Rules apply, which automatically leads to

disqualification of the result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes. The Alleged Offender competed at the following races and her results automatically disqualified are as follows:

November 11, 2016	3000m Division B	Final ranking: 20th place
November 12, 2016	Team Pursuit	Final Ranking of KOR Team: 3rd place
November 13, 2016	1500m Division B	Final Ranking: 14th Place
November 13, 2016	Mass Start	Final Ranking: 17th Place

VI. Decision

1. The following results of Ms. Jiwoo Park at the ISU World Cup Speed Skating 2016 in Harbin, China. are disqualified:

November 11, 2016	3000m Division B	Final ranking: 20th place
November 12, 2016	Team Pursuit	Final Ranking of KOR Team: 3rd place
November 13, 2016	1500m Division B	Final Ranking: 14th Place
November 13, 2016	Mass Start	Final Ranking: 17th Place

2. Korean Skating Union has to reimburse the ISU for the costs of these proceedings.
3. The skater bears her 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.