

INTERNATIONAL SKATING UNION

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Case No. 02/2012

May 31, 2012

DECISION

of the

ISU Disciplinary Commission

Panel: Volker Waldeck, Chair
Dr. Egbert Schmid
Susan Petricevic

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. Mary Grace, represented by Mr. Edward G. Williams,
Attorney-at-Law, Stewart Occhipinti, 65 W. 36th Street, 7th
Floor,
New York, N.Y. 10018, USA,

- Alleged Offender -

and

U.S. Speed Skating,
5662 South Cougar Lane, Kearns, UT 84118, USA

- Interested Member -

Concerning alleged violation of the ISU Anti-Doping Rules

I. History of the procedure

On March 15th 2012, the ISU filed a complaint against the Alleged Offender, together with 8 exhibits. The Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission on March 21st 2012 to file a statement of reply within 21 days upon receipt of the complaint. Attorney Mr. Williams addressed his answer to the ISU Office on April 2, 2012 and completed it by emails to the Disciplinary Commission on April 11, 2012.

II. Procedural Matters

According to Article 24, Paragraph 10 of the ISU Constitution 2010 and Article 8.1.1 of the ISU Anti-Doping Rules 2010 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 North America/Oceania Regional Qualifying event for the World Allround Speed Skating Championships 2012 in Calgary on January 14-15, 2012, 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 20 years old member of U.S. Speedskating. She participated in the North America/Oceania Regional Qualifying event for the World Allround Speed Skating Championships 2012 in Calgary on January 14-15, 2012.

2. Following an in-competition Anti-Doping test carried out on January 15, 2012, the ISU received an adverse analytical finding for sample 2625813 from the Alleged Offender. The said sample was found to contain Pseudoephedrine at a measured concentration of 183 µg/ml (with a combined standard uncertainty estimated by the laboratory of 11.3 µg/ml; decision limit = 170 µg/ml). Pseudoephedrine belongs to class S6b (specified stimulants) of the 2012 WADA List of Prohibited Substances and Methods and is prohibited In-Competition, when its concentration in urine is greater than 150 µg/ml.

The Complainant has offered as Evidence:

- Doping Control Form for Sample 2625813 of January 15, 2012, taken at the Regional Qualifier Event at Calgary, (Exhibit 1),
- Laboratory result for A Sample 2625813 of January 27, 2012 of the Institut Armand-Frappier, Quebec, Canada, (Exhibit 2),
- Class S6b (Specified Stimulants) of 2012 WADA List of Prohibited Substances and Methods, (Exhibit 3).

3. By letter of February 1, 2012, 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 the B sample to be analyzed (Exhibit 4).

4. In her declaration of February 20, 2012 (Exhibit 5) the Alleged Offender explained that she was suffering from nasal and chest congestion prior to and at the competition in Calgary. To treat and ameliorate the symptoms from that condition she took "Allegra D". She would have taken routinely "Allegra D" (or the generic version thereof, fexofenadine) for nasal and chest congestion, as well as "Claritin" and "Claritin D". She used "Claritin" and "Claritin D" from

2004 through 2009 but then switched to “Allegra D” and generic brands because they were less expensive.

When she was drug tested at the Calgary competition she told her chaperone to record the medication “Allegra D” (among others that she had taken) on the ISU Doping Control Form, but the chaperone erroneously recorded “daily”.

Further she stated that she has been in the US Anti Doping Agency (USADA) testing pool and had previously been drug tested on at least six occasions, both in and out of competition and had never been tested positive, although she had been taking either Claritin or Allegra D. In Calgary she took the same dosage of the decongestant that she had previously taken when she was drug tested and as noted above she disclosed the medication on the ISU Doping Control Form.

Furthermore, her taking “Allegra D” in the days prior to the Calgary competition was not intended to enhance her performance at the competitions on January 14 and 15, 2012, but only to relieve the symptoms of nasal and chest congestion.

When she was confronted with the result of the test she was shocked. She was unaware that “Allegra D” contained a level of “Pseudoephedrine” that, although permitted to be used when training and when tested “out of competition”, was not permitted to be used “in competition”.

The Alleged Offender waived her right to the testing of her “B sample”.

5. The Alleged Offender’s attorney-at-law, Mr. Edward G. Williams, confirmed the explanation of his client by his declaration of February 20, 2012 (Exhibit 6).

The Attorney submitted that the Alleged Offender who has never been tested positive and who fully disclosed her use of the cold medication to the Doping Control Officer at the Calgary competition should be accorded full consideration for a reduced sanction. In 11 similar cases in which the U.S. Anti-Doping Agency has imposed sanctions on an athlete for testing positive for pseudoephedrine 6 cases ended with a Public Warning, one with a suspension of one month and 4 cases with a 3 months suspension.

In his email of April 11, 2012, addressed to the ISU and the Disciplinary Commission, the Attorney agreed to a 4 month period of ineligibility of his client.

IV. Law

1. Pseudoephedrine, as uncontestedly found present in the Alleged Offender’s bodily specimen, belongs to class S6b (specified stimulants) of the 2012 WADA List of Prohibited Substances and Methods and is prohibited In-Competition when its concentration in urine is greater than 150 µg/ml. According to Article 4.1 of the ISU Anti-Doping Rules 2010 the Prohibited List which is published and revised by WADA is incorporated into those ISU rules.

2. According to Article 2.1 of the ISU Anti-Doping Rules, 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.

3. According to Article 10.2 of the ISU Anti-Doping Rules a 2 years ineligibility period has to be imposed in case of a first violation.

According to Article 10.4 of the ISU Anti-Doping Rules this sanction shall be replaced for a first violation at a minimum with a reprimand and a maximum of 2 years ineligibility in case of specified substances, where a skater can establish how it entered her body and that it was not intended to enhance the skater's performance or mask the use of a performance enhancing substance. The degree of fault of the skater shall be the criteria considered in assessing any reduction of the period of ineligibility.

In the present case, the Alleged Offender has credibly explained to have taken Allegra D only for the purpose of treating her nasal and chest congestion not knowing that it contains a prohibited substance. The fact that the intake of Allegra D was declared on her doping control form evidences her error and lack of intent. Further, taking into account the estimated standard uncertainty the concentration of Pseudoephedrine was less than 15 % above the allowed limit of 150 µg/ml and in this concentration is hardly able to deplore a performance enhancing effect.

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 which have been included on the prohibited list. This principle applies also to the Alleged Offender. However, the following circumstances make it admittedly difficult for athletes to handle medication containing Pseudoephedrine. Pseudoephedrine was on the IOC's banned list of substances, but was not included in the WADA Prohibited List which replaced the IOC's list in 2004. It was only introduced in the WADA list in January 1, 2010. (see: WADA additional information in regards to the reintroduction of Pseudoephedrine to the 2010 prohibited list Exhibit 8).

Further, Pseudoephedrine is prohibited only in competition and only when its concentration in urine is greater than 150 µg/ml. Even if an athlete is aware of the presence of Pseudoephedrine in Allegra D, it is difficult to assess whether its intake leads to a concentration above the limit, especially since it is known that large individual differences can be found in the concentration of Pseudoephedrine in urine after the intake of one dose of the medication. Moreover Claritin which the Alleged Offender used to take does not contain Pseudoephedrine, but Claritin D does as well as does Allegra D. All three products are common cold medicines. Of course it is the duty of all athletes to inquire with respect to each product whether they contain a prohibited substance or not. On the other hand it is comprehensible that an athlete erroneously takes Claritin and Claritin D respectively Allegra D as interchangeable.

4. For all the above reasons the Alleged Offender's degree of fault is modest and a four months ineligibility period seems to be the adequate sanction in the present case. The disqualification of the results obtained by the Alleged Offender in the North America/Oceania Regional Qualifying event for the World Allround Speed Skating Championships 2012 is a compelling consequence of her violation of the ISU Anti-Doping Rules according to Art. 9 of the ISU Anti-Doping Rules. For the purposes of the ISU Anti-Doping Rules this event has to be considered as one competition, given that it leads to one final result (see: definition of "competition", Appendix 1 of the ISU Anti-Doping Rules).

5. The ineligibility starts according to Article 10.9 of the ISU Anti-Doping Rules 2010. In her declaration of February 20, 2012 the skater admitted the Anti-Doping Rule violation 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 January 15, 2012. The period of ineligibility ended on May 14, 2012.

V. Costs

According to Article 12.2 of the ISU Anti-Doping Rules 2010 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 U.S. Speedskating.

The skater has to bear her own costs.

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

Decision

1. Mary Grace is declared responsible for an Anti-Doping violation, committed on January 14-15, 2012 at the North America/Oceania Regional Qualifying event for the World Allround Speed Skating Championships 2012 in Calgary.
2. A period of ineligibility of 4 months, beginning on January 15, 2012 and ending on May 14, 2012, is imposed on Mary Grace.
3. Mary Grace's competitive results obtained from January 14, 2012 to May 14, 2012, included but not limited to her results in the North America/Oceania Regional Qualifying event for the World Allround Speed Skating Championships in Calgary are disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.
4. U.S. Speedskating 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.

May 31st 2012



Volker Waldeck



Dr. Egbert Schmid



Susan Petricevic

The decision is sent to Attorney-at-Law Mr. Edward G. Williams by registered mail against return receipt and to the Interested Member and to the ISU by email.

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 24 Paragraph 12 and Article 25 of the ISU Constitution 2010.