BEFORE THE AMERICAN ARBITRATION ASSOCIATION

North American Court of Arbitration for Sport Panel

United States Anti-Doping Agency, Claimant, v. Eric Thompson, Respondent.	:	Case No: AAA No. 52 190 00556 07

ARBITRAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties at a hearing held on January 22, 2008 in Indianapolis, Indiana, do hereby render the following Award:

1. The Parties

1.1 The Claimant, United States Anti-Doping Agency ("USADA"), is the independent anti-doping agency for Olympic Sports in the United States and is responsible for conducting drug testing and adjudicating positive test results pursuant to the United States Anti-Doping Agency Protocol for Olympic Movement Testing.

1.2 The Respondent, Eric Thompson, is a track athlete who competes primarily in the sport of high jumping. At the time of the events in question, he was 18 years old and had just graduated from public high school in Herrin, Illinois, a town with population of about 10,000 persons located in the southern part of that State.

2. Facts Established at the Hearing

2.1 Prior to his graduation, Mr. Thompson had a distinguished high school career as a track athlete in the State of Illinois, winning nine individual or team event State championships. His specialty is the high jump, in which he was one of the outstanding jumpers nationally by his senior year.

2.2 Mr. Thompson had never competed in any athletic events at a level higher than Illinois high school sports. The high school events in which he competed did not include testing for doping, nor were doping rules a subject of instruction as part of his school sports program, although the coaches did conduct team meetings at which the importance of "making good choices" in life styles was emphasized. Herrin High School did conduct limited monthly, random doping testing of a few students among those participating in extracurricular activities, but Mr. Thompson was never tested as part of that program.

2.3 Mr. Thompson was a heavily recruited high school track athlete, and during his senior year he was awarded and accepted a fully-paid athletic scholarship to attend the University of Arkansas, where he had long hoped to enroll because of its distinguished track and field tradition. Mr. Thompson's family circumstances would not permit him to attend college in the absence of substantial financial aid.

2.4 At about the time of his high school graduation, Mr. Thompson and his coaches determined, essentially on the spur of the moment in June 2007, and only a few days before the meet, to enter Mr. Thompson in the high jump event at the USA Junior National Track & Field Championship (the "Junior National Championship", also known

as the "U.S. Outdoor Nationals") in Indianapolis, Indiana, so that he might gain experience against other talented high jumpers in preparation for his college athletic career.

2.5 During the evening of June 19, 2007 Mr. Thompson and several of his friends attended a high school graduation party in their hometown. Alcohol was consumed at the party, and a person not known to Mr. Thompson offered to sell cocaine to a group of attendees including Mr. Thompson. Mr. Thompson contributed $5.00 toward this group purchase and consumed a small amount of cocaine nasally by inhaling once.

2.6 Mr. Thompson had no prior history of involvement with cocaine or any other narcotic and testified credibly that this was the only occasion in his life when he consumed any prohibited drug. His father and his high school coach both testified that Mr. Thompson had never been involved in any disciplinary problems.

2.7 On the morning of June 20, 2007 Mr. Thompson's high school track coach and an assistant coach/guidance counselor drove Mr. Thompson to Indianapolis. Prior to that time, neither of the coaches had had any experience coaching participants in national track meets; and neither they nor Mr. Thompson had read materials available on the Junior National Championship or USADA websites concerning doping testing. In the car during the drive to Indianapolis, Mr. Thompson read materials sent to him prior to the event stating that there would be random doping testing and that the first and second place winners in each event would be tested.

2.8 Mr. Thompson mentioned this to his coach, and they had a brief conversation about doping testing in the car. The coach remarked, "We don't have to worry about that, do we?" Mr. Thompson, in the back seat of the car, avoided the question, responding, "Oh, come on, Coach." In fact, Mr. Thompson at that moment became fearful about the fact that he had consumed a small amount of cocaine the previous night. However, he did not disclose this to his coach because of youthful nervous embarrassment.

2.9 Mr. Thompson competed in the high jump in Indianapolis on June 21, 2007, the second day after his consumption of cocaine at the graduation party. He placed second in the event, although his best jump was significantly below his prior jumping achievements. As a result of placing second, Mr. Thompson was subject to doping testing.

2.10 Cocaine is among the prohibited substances in category S6 of the World Anti-Doping Code 2007 Prohibited List (stimulants). Testimony at the hearing from Dr. Richard Stripp, an expert toxicologist, established that cocaine ingested nasally could have a stimulant effect only within a period of minutes, or up to an hour, depending on the dose, and would have no continuing stimulant effect two days after ingestion. There is no suggestion that Mr. Thompson ingested cocaine with any intention to influence his athletic performance approximately two days later.

2.11 The parties have stipulated, as is set forth below, that Mr. Thompson's urine sample specimen number 1516794 tested positive for the substance benzoylecgonine, a metabolite of cocaine. Testimony from Dr. Stripp confirmed that the

test results were consistent with the athlete having consumed cocaine within the prior two days and that the presence of the chemical in Mr. Thompson's body could have had no positive effect on his performance at the Junior National Championship in Indianapolis. These facts are not contested.

2.12 When he was advised of the test results, Mr. Thompson confessed what he had done to his parents and his high school coach and accepted responsibility for his actions. He agreed to an immediate suspension from further competition and has cooperated fully with USADA in this proceeding.

2.13 Although Mr. Thompson had planned to enroll in the University of Arkansas for the Fall 2007 semester, he was unable to do so because of a delay in submitting certain paperwork required for admission. The delay was caused by a junior college at which Mr. Thompson had taken a course and not by Mr. Thompson. As a result, Mr. Thompson enrolled at the University of Arkansas for the Spring semester on January 14, 2008. During the Fall of 2007 he worked with his father as a roofer, earning $8 per hour, in Herrin.

2.14 Because of his agreement to suspension for a doping offense, Mr. Thompson is not eligible to participate in track activities at the University of Arkansas. However, since his athletic scholarship previously had been granted for the school year 2007-2008, he is attending the university for the present semester on full scholarship.

2.15 The assistant coach in charge of jumping events at the University of Arkansas, who would be Mr. Thompson's coach there, testified at the hearing that

athletic scholarships are granted on a year-by-year basis and reviewed toward the end of each year to determine whether they should be renewed. Mr. Thompson's scholarship therefore will be reviewed for possible renewal in the Spring of 2008. The Arkansas coach testified that, if Mr. Thompson is ineligible to compete during the 2008-2009 season, it is likely that his athletic scholarship will not be renewed. Without the scholarship, Mr. Thompson would not be able to continue to attend the University of Arkansas.

2.16 Mr. Thompson has committed to participate in a substance abuse counseling program at the University of Arkansas, beginning immediately.

3. Stipulated Facts

Prior to the hearing, the parties entered into the following stipulation:

3.1 That the USADA Protocol for Olympic Movement Testing ("Protocol") governs the hearing for an alleged doping offense involving USADA specimen number 1516794;

3.2 That the mandatory provisions of the World Anti-Doping Code ("WADA Code") including, but not limited to, the definitions of doping, burdens of proof, Clauses of Prohibited Substances and Prohibited Methods, and sanctions, and contained in the USADA Protocol at Annex A, and the International Association of Athletics Federations ("IAFF") Anti-Doping Rules are applicable to this hearing for the alleged doping offense involving USADA specimen number 1516794;

3.3 That Mr. Thompson gave the urine sample designed as USADA specimen number 1516794 on June 21, 2007, as part of the USADA testing program at the U.S. Outdoor Nationals;

3.4 That each aspect of the sample collection and processing for the A and B bottles of USADA specimen number 1516794 was conducted appropriately and without error;

3.5 That the chain of custody for USADA specimen number 1516794 from the time of collection and processing at the collection site to receipt of the sample by the World Anti-Doping Agency accredited laboratory at the University of California at Los Angeles ("UCLA Laboratory") was conducted appropriately and without error;

3.6 That the UCLA Laboratory's chain of custody for USADA specimen number 1516794 was conducted appropriately and without error;

3.7 That the UCLA Laboratory, through accepted scientific procedures and without error, determined the sample positive for the finding of the substance benzoylecgonine, a metabolite of cocaine, in both the A and B bottles of USADA specimen number 1516794 ("Positive Test");

3.8 That Mr. Thompson agrees that the Positive Test with a finding of the substance benzoylecgonine in both the A and B bottles of USADA specimen number 1516794 is a first doping offense;

3.9 That the parties agree that the period of ineligibility will be a maximum of two (2) years beginning on the date of the hearing panel's decision with credit being

given for the time Mr. Thompson has served a provisional suspension beginning on July 18, 2007, until the date of the hearing panel's decision so long as Mr. Thompson does not compete during the period of any provisional suspension;

3.10 That Mr. Thompson reserves the right to argue exceptional circumstances under the applicable rules.

4. Applicable Rules

4.1 As a result of competing in the Junior National Championship, Mr. Thompson is subject to the International Association of Athletics Federations Anti-Doping Rules ("IAAF ADR"), under which the presumptive period of ineligibility for a first offense involving use of a prohibited stimulant is two years. IAAF ADR 40.1(a).

4.2 IAAF ADR 40.3 permits a reduction of the applicable period of ineligibility where exceptional circumstances are established by the athlete. In order to receive any exceptional circumstances reduction in the presumptive period of ineligibility, an athlete must prove that the circumstances of his or her violation are exceptional and that he or she bears "no significant fault or negligence" in connection with the violation. *See* IAAF ADR 40.3.[1]

4.3 The IAAF ADR states that "it is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they

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[1] Because Mr. Thompson is not an "international level athlete," the exceptional circumstances analysis in this case is to be performed by an Arbitrator without referral to the IAAF Doping Review Board. *See* IAAF ADR 38.13 and IAAF ADR 38.16.

shall be held responsible for any prohibited substance found to be present in their bodies." IAAF ADR 38.12(i). It is an athlete's duty to guard vigilantly against committing a doping offense and to monitor what goes into his or her body. Once USADA has proved a doping offense, there is a presumption against the athlete when any reduction in the sanction is sought. In order to obtain a reduction in the presumptive sanction set forth in the rules, an athlete must rebut this presumption that the maximum sanction should be applied. *See Wang Lu Na, et al. v. FINA*, (CAS 98/208), p. 25 ("If the presence of the prohibited substance is established...then the burden shifts to the competitor show why...the maximum sanction should not be imposed.")

4.4 To be entitled to any reduction in the period of ineligibility under the "no significant fault or negligence" section of the WADA Code, an athlete must prove "how the prohibited substance entered his system." IAAF ADR 40.3(e). In this case, that is established: Mr. Thompson inhaled cocaine at a party within two days prior to being tested.

4.5 If an athlete is able to prove how the prohibited substance entered his or her body, in order to qualify for a reduced period of ineligibility of "not...less than half the minimum period of ineligibility otherwise applicable" the athlete must also prove that the substance entered the athlete's body with "no significant fault or negligence" on the part of the athlete. IAAF ADR 40.3(e). The IAAF ADR defines the "no significant fault or no significant negligence" test as follows:

> When exceptional circumstances have been determined in an athlete's case under Rule 38 to demonstrate that the athlete's fault or negligence, when viewed in the totality of

> the circumstances, was not significant in relationship to the anti-doping rule violation.

IAAF Anti-Doping Rules (Definitions).

4.6 The exceptional circumstances provision is meant to apply "only in cases where the circumstances are truly exceptional and not in the vast majority of cases." IAAF ADR 38.12(ii); *Hipperdinger v. ATP Tour* (CAS 2004/A/690); *Torri Edwards and IAAF* (CAS OG 04/003); *Kicker Vencill and USADA* (CAS 2003/A/484); and *USADA v. Faruk Sahin* (AAA 30 190 01080 04). To conclude otherwise would be to permit the exceptional circumstances rule to undermine the consistent and uniform application of anti-doping rules to similarly situated athletes around the world. While exceptions to the presumptive periods of ineligibility are permitted, it is uniformly accepted that these exceptions are rare and that the bar for justifying a reduction in sanction is high.

5. Discussion

5.1 The jurisprudence of anti-doping cases contains a number of examples of cases in which athletes have been sympathetic victims of their own negligence but have failed to establish that the negligence was not significant. *E.g., USADA v. Nathan Piasecki*, AAA No. 30-190-00358-07. In the present case, the situation is different from that in any other reported case. Mr. Thompson is a naïve young man, a virtual stranger to national athletic competition, who wandered briefly onto that stage without any material guidance from support personnel. Mr. Thompson committed a doping violation, is

responsible for his conduct[2] and should be sanctioned for competing with a prohibited substance in his body. However, he did so without significant fault or negligence.

5.2 When a defense of no significant fault or negligence is raised, an Arbitrator must review the athlete's conduct "in the totality of the circumstances" to determine whether his fault or negligence was "significant" in relation to the anti-doping rule violation. Among the factors that may be considered are two of particular relevance here: (a) the athlete's relative youth and inexperience and (b) the circumstances of his reliance on support personnel, in this case coaches. Mr. Thompson argues that his culpability is mitigated by his age, total lack of relevant experience and the fact that his high school coaches failed to advise him regarding the drug testing program applicable to competitors at the Junior National Championships.

5.3 Age and experience are factors sometimes looked to by arbitrators in assessing exceptional circumstances. The Comment to Articles 10.5.1 and 10.5.2 of the revised WADA Code (effective January 1, 2009) basically summarizes this thinking under existing precedent by stating that "[w]hile minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete or other Person's fault under Article 10.5.2[.][3]

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2 Although he had been drinking alcohol at the time when he ingested cocaine, Mr. Thompson makes no claim that the influence of alcohol should be a mitigating factor in determining his sanction.

3 Code Article 10.5.2 is not materially different from IAAF ADR 40.3.

5.4 USADA submits that it would not be appropriate to apply the revised and not yet effective WADA Code in lieu of the currently applicable version of the Code, but USADA notes that Article 10.5.2 in the new Code is identical to Article 10.5.2 in the current WADA Code (which became effective in 2003). The revised Comment may be relied upon currently as setting forth a commonly accepted interpretation of Article 10.5.2.

5.5 Mr. Thompson also contends that his coaches' failure to advise him regarding drug testing at the event, drug testing rules and the prohibited nature of cocaine as a stimulant is a factor to be considered. The Comments to the current (and revised) WADA Code reflect that reliance on support personnel cannot be advanced to entirely eliminate a sanction under a "no fault" analysis, but reliance upon support personnel can be relevant in the context of a "no significant fault" analysis. There are a number of cases in which an athlete's reliance on support personnel has been a factor noted in an exceptional circumstances analysis. *See, e.g., Squizzato v. FINA*, CAS 2005/A/830 (athlete's sanction reduced from two years to one year where she relied on her mother's investigation of a foot cream); *ATP and Vlasov*, (ATP Anti-Doping Panel; March 2005) (athlete's sanction reduced from two years to one year where he relied on physician's advice); *Cañas v. ATP Tour*, CAS/2005/A/951 (athlete's sanction reduced from two years to fifteen months where he relied on physician's advice).

5.6 Use of cocaine is a dangerous and legally prohibited practice, no matter what the quantity involved. Cocaine is highly addictive and dangerous to an athlete's health. In addition, the WADA Code includes cocaine as a prohibited substance because of its potential stimulant effect. There should be no doubt that intentional ingestion of

cocaine, no matter how limited, resulting in a positive doping test constitutes a doping violation requiring sanction.

5.7 Nevertheless, the fault here was not "significant" in view of the totality of the circumstances. Mr. Thompson was young and inexperienced and ingested cocaine a single time in his life. He did so apparently out of a wrong-headed sense of experimentation and not to achieve any competitive athletic advantage, nor did he achieve any. Mr. Thompson's testimony at the hearing, and the testimony of his father and high school coach, established that he is a humble and contrite person who recognizes the magnitude of his mistake and accepts its serious consequences.

5.8 Mr. Thompson had had no experience with anti-doping regulations and had no one in a position to advise him. He had graduated from high school at the time in question, was not part of a continuing coaching program and was accompanied to the Junior National Championships by what were at that point former coaches who themselves had no experience with the relevant anti-doping testing. This does not excuse Mr. Thompson's lack of knowledge of the applicable anti-doping rules, but it is a relevant mitigating circumstance in the case of a young athlete with no available informed guidance.

5.9 In these circumstances, it is appropriate to limit the period of Mr. Thompson's suspension to one year.

6. Applicable Sanction

6.1 The presumptive period of ineligibility for a first doping violation involving cocaine is two years. If exceptional circumstances are proved, the athlete's

period of ineligibility may be reduced to no less than one year, as is appropriate here. However, in the present case, the reduction of the sanction to one year is conditioned on Mr. Thompson's participation in a substance abuse counseling program during the full year following his one-year period of ineligibility.

6.2 The IAAF ADR provides that "the period of ineligibility shall start on the date of the hearing decision providing for ineligibility...[w]hen an athlete has served a period of provisional suspension prior to being declared ineligible...such a period shall be credited against the total period of ineligibility to be served." IAAF ADR 40.9. Mr. Thompson has served a provisional suspension since July 18, 2007. Accordingly, Mr. Thompson's period of ineligibility shall extend from July 18, 2007 to and including July 17, 2008.

6.3 IAAF ADR 39.1 provides that "[w]here an anti-doping rule violation occurs in connection with an in-competition test, the athlete shall be automatically disqualified from the event in question and from all subsequent events of the competition, with all resulting consequences for the athlete, including the forfeiture of all titles, awards, medals, points and prize and appearance money." Also, "where an athlete has been declared ineligible...all competitive results obtained from the date the positive sample was provided...through to the commencement of the period of provisional suspension...shall, unless fairness requires otherwise, be annulled with all resulting consequences for the athlete...including the forfeiture of all titles, awards, medals, points and prize and appearance money." IAAF ADR 39.4. As a result, in addition to the sanction of a one-year period of ineligibility, all competitive results, medals, points and prizes obtained by Mr. Thompson on or subsequent to June 21, 2007, the date of his

positive drug test, must be disqualified. Since Mr. Thompson has engaged in no such competition subsequent to that date, only the result of the Junior National Championship high jump event is involved.

Decision and Award

The Arbitrator therefore rules as follows:

1. Mr. Thompson committed a doping violation, for which a suspension from competition of one (1) year, to take place effective from July 18, 2007 through July 17, 2008, is imposed.

2. During the period of his suspension, and for at least one year thereafter, Mr. Thompson must participate in a substance abuse counseling program such as the one available to students at the University of Arkansas.

3. The result of Mr. Thompson's competition at the Junior National Championship on June 21, 2007 is cancelled.

4. The administrative fees and expenses of the American Arbitration Association totaling $750.00 shall be borne entirely by the United States Olympic Committee and the compensation and expenses of the Arbitrator totaling $6,102.56 shall be borne entirely by the United States Olympic Committee.

5. The parties shall bear their own costs and attorneys' fees.

6. This Award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.

Signed this 31st day of January 2008

James H. Carter, Arbitrator

I, James H. Carter, do hereby affirm upon my oath as an Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

James H. Carter, Arbitrator

31 January 2008