

Before the American Arbitration Association  
North American Court of Arbitration for Sport Panel

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In the Matter of the Arbitration between

Re: 30 190 00782 07

United States Anti-Doping Agency,  
Claimant

v.

Joe Warren,  
Respondent

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Judge James M. Murphy, (ret)  
Sitting alone

Hearing: In person hearing held January 3, 2008 in Colorado Springs,  
Colorado.

Appearances: Howard L. Jacobs, Attorney for Joe Warren  
William Bock III, General Counsel for USADA

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 FIND AND AWARD AS FOLLOWS:

Introduction: Joe Warren is a 31-year-old man who comes before the panel in his role as a Greco-Roman wrestler. His athletic history portrays a highly motivated and successful champion in the 60 kg class. He is originally a native of Grand Rapids, Michigan who graduated from the University of Michigan. He has been married to Christy Cheh Warren for four years.

He is the 2006 world champion in his class and is the 2006 Pan American champion as well. In 2007 he won the gold medal at the World Cup in Antalya, Turkey, the gold medal at the U.S. National Championships in Las Vegas, Nevada and gold medal at the Senior World Team Trials in Las Vegas, Nevada. He has not lost a wrestling match in four years. He was a finalist in 2006 for the Sullivan award, emblematic of the nation's top amateur athlete.

Following his championship match at the Senior World Team Trials on June 10, 2007 he provided a urine sample for an in competition test which proved to be positive for THC in excess of 15 ng/ml. This cannabinoid is prohibited in competition as a specified substance pursuant to Federation Internationale des Luttes Associees (FILA) Anti Doping Regulation 10.3.

Respondent Warren has stipulated and agreed that the USADA protocol For the Olympic movement testing governs this hearing for an alleged doping offense involving USADA specimen 1514276. He also stipulates that the World Anti Doping code, (WADA Code) mandatory provisions are applicable to this hearing.

He has agreed and stipulated that he provided sample 1514276 on June 10, 2007 as part of the USADA testing program at the trials: the sample collection and processing for the A and B sample were both conducted appropriately and without error; that the chain of custody was conducted appropriately and without error; that the University of Utah Laboratory correctly determined the sample positive for Carboxy-THC, a prohibited cannabinoid in both the A and B samples in concentrations greater than 15 ng/ml; that this positive test is a second doping offense committed by Respondent Joe Warren; that the period of eligibility will be maximum of two (2) years beginning on the hearing panel decision with credit to be given for time Mr. Warren served as a provisional suspension beginning June 23, 2007 so long as he does not compete during the provisional suspension.

Mr. Warren reserved the right to argue exceptional circumstances and other issues related to the length of the sanction under applicable rules and CAS precedent.

Factually, Joe Warren previously tested positive for THC during an in-competition test on April 15, 2006 and received a 3-month suspension, which was deferred, after his completion of a USADA anti-doping program, which he characterized as a 30-minute on-line educational program.

Remaining for resolution is the length of the period of ineligibility for a second marijuana offense discovered pursuant to the June 10, 2007 in competition test.

FILA Anti Doping Regulation 10.3, Specified Substances provides in part:

The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents, where a wrestler can establish that the use of such a specified substance was not intended to enhance sport performance.

These specified substances are the following: ...Cannabinoids...

Second violation:

(2) years' Ineligibility

However the wrestler or other person shall have the opportunity in each case, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Article 10.5.

Respondent concedes that the provision for relief under Regulation 10.5.1 which arises when the wrestler bears no fault or negligence for the violation does not apply under the facts of this case. Thus the Panelist's attention is directed to the application of Regulation 10.5.2, which provides:

10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

10.5... If a Wrestler establishes in an individual case involving such violations that he or she bears No Significant Fault or Negligence, the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years.

An exceptional circumstance presented by Respondent is that he portrays himself as the only 60 kg Greco Roman wrestler in the United States capable of qualifying for the US Olympic team and also capable of winning a medal at the Olympic games in 2008.

He argues that the application of the standard period of ineligibility (2 years) or a reduction to one year pursuant to a finding of No Significant Fault or Negligence would effectively preclude him from not only competing in the 2008 Olympic Games in Beijing China but from even attempting to qualify for the U.S. team. He therefore seeks to apply the principle of proportionality to justify a further reduction below one year to a period that would make him eligible for the Olympic trial and other qualifying matches in the spring of 2008. Without his membership on the team, he argues that the U.S. will not win a medal and in fact will not have a qualified 60 kg wrestler on the team. If another 60 kg wrestler qualifies, Respondent, if reinstated, could attempt to qualify by beating out a U.S. qualifier but without an expedited reinstatement, he will not have such an opportunity.

Essentially, while admitting the inhalation of marijuana smoke and the consequential introduction of cannabinoids, a prohibited substance into his body for the second time in his career, Mr. Warren asserts that exceptional circumstances justify a finding of No Significant Fault or Negligence based on the facts of his case and therefore a reduced period of ineligibility. Additionally, he argues that the application of the principle of proportionality applies to this sanction justifying a reduction below that allowed by the FILA Regulations. In support of this position he urges application of reasoning articulated in *Squizzeto v. FINA* (CAS 2005/A/83).

The panel stated, "The mere adoption of the WADA Code by a respective Federation does not lead to the conclusion that there is no other possibility for greater or less reduction of a sanction than allowed by Regulation 10.5...The principle of proportionality would apply if the award were to constitute an attack on a personal right which was serious and totally disproportionate to the behavior penalized."

CAS delivered an advisory opinion in 2005 in FIFA & WADA. CAS 2005/C/976 & 986. therein they held:

The right to impose a sanction is limited by the mandatory prohibition of excessive penalties, which is embodied in several provisions of Swiss law. To find out whether a sanction is excessive, a judge must review the type and scope of the proved rule violation, the individual circumstances of the case, and the overall effect of the sanction on the offender. However, only if the sanction is evidently and grossly disproportionate in comparison to the proved rule violation and if it is considered as a violation of fundamental justice and fairness, would the Panel regard such a sanction as abusive and, thus contrary to mandatory Swiss law.

USADA argues that inherent in WADA is the concept of Proportionality and that this principle is already embodied in the ability of the panel to make a finding of exceptional circumstances under a declaration of No Significant Fault or Negligence and thus reduce the penalty by one-half.

This argument was considered in the matter of Jovanovic v. USADA, CAS 2002/A/360. The panel noted that there is no specific rule in FIBT Regulations, which would entitle a tribunal to reduce the mandatory minimum period of suspension. Such a rule is also absent in the FILA rules in the opinion of this panelist. Further, the Jovanovic panel stated: "...the fact that an athlete may miss the Olympic Games as a result of a suspension for a doping offence cannot, in our view, amount to "special, exceptional circumstances". If it did, no athlete could ever be suspended for the minimum two-year period in the two years before the next Olympic Games.

Mr. Warren's argument for a reduction of the period of ineligibility rests on a foundation of a history of tragic events in his life, said events having resulted in a diagnosis by Mr. Allan Greenfield, a psychotherapist with a Masters Degree in Social Work. His diagnosis is that Mr. Warren suffers from Major Depression, unspecified, posttraumatic stress disorder, ADHD and personality disorder, nos.

Mr. Greenfield began working with Mr. Warren in September 2007 and continues in therapy with him presently. He attributes 5 events in respondent's life to be significant to his psychological conditions. They include: his use of marijuana which at times has been significant but was not quantified by Greenfield; a chaotic pattern of emotional neglect and dishonesty in his home while growing up; ADHD during childhood; the death of his roommate and best friend in college; and the relationship with his wife and the miscarriage that she suffered in March of 2007.

As a result of the mental conditions, he opines that Mr. Warren was overwhelmed and had no skill set to care for his feelings. His previous use of marijuana showed him that his insomnia could be overcome by its use. He could not care for himself and relied on Christy to care for his problems. Since she was crushed by her miscarriage and using

marijuana herself regularly to self medicate, she was unavailable to meet his needs. His depression is characterized as impairing his judgment to the point that he didn't consider the ramifications to his athletic career when he smoked it in May 2007.

Mr. Greenfield and Mr. Warren both stated that the use does not remove the responsibility to distinguish between right and wrong. Mr. Greenfield failed to determine as part of his diagnosis, the historical pattern of use except for the use following his friend's death in 1997. It was determined that the period of regular use was for the next 18 months until he met his wife and periodic use thereafter on a recreational and social basis.

Testimony indicated that Mr. and Ms. Warren regularly had marijuana in a jar in their home in May 2007, had a glass bow marijuana pipe to use when smoking it and had previously had friends in the home who smoked marijuana in their home.

Of particular note is Mr. Greenfield's clinical note made while in therapy with Mr. Webber on October 12, 2007. Therein he writes that following the March 2007 miscarriage, "Christy felt real bad and was doing badly - unable to work - sounded like unable to attend to his feelings-started to smoke nightly and he joined her on occasion."

Dr. Naakesh DeWan, M.D., a psychiatrist who consults in substance abuse treatment centers and hospitals and is a sport psychiatrist reviewed the Greenfield report. He concludes that the Greenfield analysis is incomplete. Dr. DeWan looked at the psychodynamic conflicts but notes a need for a much greater number of issues addressed for a comprehensive psychological diagnosis or workup. He recommends lab test, family history of substance abuse and depression, how many previous episodes of depression, a comprehensive mental status examination, cognitive exam and objective measure of depressive states or symptoms existing on an emerging basis. Only thereafter can an objective diagnosis of Mr. Warren's psychological status be diagnosed.

Dr. DeWan agrees that a properly diagnosed case of major depression can impair cognitive ability and functions and the ability to tell right from wrong.

He further opined that he couldn't say marijuana is a performance enhancing substance for a wrestler. Such an assertion that it does enhance performance is not supported in any mainstream medical journal.

Mr. Greenfield concluded that Respondent knew he was putting his athletic career at risk by marijuana use but was unable to control his actions. He represents that Mr. Warren had the capacity to make a different choice, could have used a different escape mechanism but felt marijuana was his most effective choice to help him.

Joe Warren testified that he had been around marijuana his whole life. Prior to his first positive test, which he says was the first positive ever for a wrestler following its listing as a prohibited substance in 2004, he observed most of the wrestlers and coaches he knew and encountered used marijuana. He was well aware that a second positive result would

carry a more severe penalty but it was hard to stop because he needed to use it to help him sleep. He stated that following his use in late May with his wife, he hoped his use would not affect his eligibility. He testified that two to three days before he provided his positive sample he was in a steam room prior to the wrestling match, trying to make weight. He realized what he had done in smoking marijuana and the possibility of a positive test result. His wife testified that the day after the use, she told him that they had to make sure that this doesn't happen again due to her concern for a positive test result.

Knowing full well that he had used marijuana prior to the tournament, knowing about the possibility of a positive test knowing that a second test result would result in a more severe penalty and knowing that the 2008 Olympic Games were just over a year away, Joe Warren made a conscious decision to compete in an international event knowing full well that the gold medalist would be required to submit a urine sample for drug testing. He did not have to compete. Had he not competed, he would not have tested positive and would not be suspended provisionally.

While his major depression may well have impaired his cognitive ability when he chose to smoke a bowl of marijuana, he later realized the potential consequences and decided to compete, hoping that he would not have tested positive.

Mr. Warren had several opportunities to avoid a second positive test. He failed to follow up on his drug education class or learn from it. He failed to treat his use or investigate his longstanding evidence of substance abuse despite its connection to his depressed state. His first positive test indicated a need for a behavior change. Regardless of one's attitude regarding the wisdom of America's marijuana laws, it remains an illegal substance, not just a prohibited substance. A potential Olympic champion and world champion, a candidate for the nation's most outstanding amateur athlete award should be aware that the continued illegal behavior may be detrimental as a lifestyle. Yet Mr. and Mrs. Warren kept marijuana in their home, kept paraphernalia used to smoke marijuana in the family home and greeted friends who were users and allowed them to smoke in the family home.

While Respondent makes a good case for exceptional circumstances regarding his one use of marijuana in May of 2007, the panel must consider his overall conduct of continued use after his first positive in 2006, a lifestyle conducive to placing his career and his liberty in jeopardy, his failure to seek competent mental and medical advice despite the obvious need for it as well as his calculated decision to take the chance on a possible positive test with full knowledge of the consequences. These considerations do not justify a reduced period of eligibility based on the principle of proportionality nor do they justify a finding of No Significant Fault or Negligence.

The panelist fails to find that the standard sanction of two years is grossly disproportionate in comparison to the stipulated rule violation nor is the sanction a violation of fundamental justice and fairness in light of Mr. Warren's several opportunities to avoid putting himself in a position where a positive test finding was likely to be made. These opportunities Mr. Warren consciously rejected.

The panelist does find that Mr. Warren did not use the prohibited substance in order to secure a competitive advantage. The specified substance that he used has not been shown to be a performance enhancing substance.

#### Decision and Award

Based on the foregoing analysis, The Panelist decides as follows:

Respondent Joseph Warren committed a doping violation on June 10, 2007. This was Joseph Warren's second doping violation.

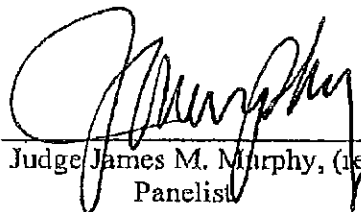
The sanction shall be a two-year suspension effective from the date of his acceptance of a provisional suspension, July 23, 2007.

The administrative fees and expenses of the American Arbitration Association totaling \$750.00 and the compensation and expenses of the arbitrator totaling \$9,420.92 shall be borne by the United States Olympic Committee.

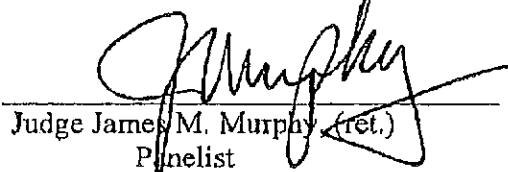
The parties shall bear their own costs and attorney's fees.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

Signed this 14<sup>th</sup> day of January, 2008

  
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Judge James M. Murphy, (ret.)  
Panelist

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

  
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Judge James M. Murphy (ret.)  
Panelist