

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel**

United States Anti-Doping Agency,)	
)	
Claimant,)	
)	AAA No. 01-18-0002-1928
v.)	
)	
Robert "Bob" Eyler,)	
)	
Respondent.)	
_____)	

FINAL AWARD

I, the undersigned Arbitrator, having been designated as the sole arbitrator in accordance with the applicable rules and having duly reviewed the materials and testimony submitted by the parties, do hereby find and issue this Final Award ("Award"), as follows:

SUMMARY AND DECISION

1. This case arises out of the collection by Claimant, United States Anti-Doping Agency ("USADA"), of a urine sample from Respondent, Robert Eyler, on February 11, 2018, at the Vegas Shoot, a major international event sanctioned by the World Archery Federation.
2. On March 5, 2018, USADA notified Respondent that the A sample collected on February 11, 2018, tested positive for carboxy-THC above the decision limit of 180 ng/mL and propranolol. Because Respondent did not accept the findings from his A sample, the laboratory analyzed the B sample, which confirmed the presence of both prohibited substances as indicated by the A sample.
3. Mr. Eyler does not contest the propriety of the collection or handling of his sample or the positive results from the testing of that sample.

4. On May 3, 2018, USADA sent Respondent a letter charging him with violations of Articles 2.1 (Presence of a Prohibited Substance or its Metabolites in an Athlete's Sample) and 2.2 (Use or Attempted Use of a Prohibited Substance or a Prohibited Method) of the World Archery Federation ("WAF") Anti-Doping Rules ("ADR") and the World Anti-Doping Code (the "Code").

5. Respondent requested a hearing on May 30, 2018, and USADA initiated this arbitration with the AAA on May 31, 2018.

6. A hearing was held in Novi, Michigan, on September 14, 2018. USADA was represented at that hearing by Mr. Jeffery Cook, Esq., and Mr. Eyler was present and represented himself.

7. For the reasons discussed below, based on the testimony at the hearing, the documents presented and the arguments and submissions of the parties, I conclude that (1) USADA has met its burden of proof and established to my comfortable satisfaction that Respondent committed a violation of Articles 2.1 and Articles 2.2 of the WAF ADR and the Code; and (2) Respondent has not met his burden to prove based on the balance of the probabilities that elimination or a reduction in the applicable sanction to less than two years is appropriate.

8. For the reasons discussed below, the sanction is (1) a period of ineligibility of two years beginning on the date of this Award; (2) disqualification of the Respondent's results from the Vegas Shoot and forfeiture of the \$52,000 prize; and (3) disqualification of any and all results for the Respondent for the period commencing February 11, 2018, through the date of this Award, including but not limited to the results from the Indoor NFAA Nationals held on March 10-11, 2018, and the results from the event in London Kentucky held on May 31, 2018.

9. The parties shall bear their own attorney's fees and costs associated with this Arbitration.

FACTS

10. The Vegas Shoot is the biggest archery event in the world. It is a premier championship run by the National Field Archer Association ("NFAA") and sanctioned by World Archery Federation, the international federation for the sport of archery. It is part of the Vegas World Championships and in 2018 had over 3,500 entrants from 52 countries, including many seasoned professional archers such as Respondent.

11. On February 11, 2018, Respondent won the Vegas Shoot grand prize of \$52,000 by beating all comers. The finale culminated in a shootout between nine archers, in front of a large crowd. After the second round (each round consists of three shots for three targets), the field was narrowed to two: Respondent and Christopher Perkins. In the very next round, Mr. Perkins missed his last shot low and Respondent held steady to finish a perfect round to win the event.

12. As a professional archer, Respondent has won five elite-level tournaments. Due to a shoulder injury, prior to the Vegas Shoot, he had not competed professionally since around 2010.

13. At the hearing, Respondent testified that he had no intention to participate in the Vegas Shoot until six days before the beginning of the event, when he was contacted by a bow manufacturer who offered to sponsor him at the event. This testimony was inconsistent with his statements to USADA in an email dated June 13, 2018, in which he stated that "a couple of weeks before the [Vegas Shoot] I decided to get back into competitive archery, got a new bow, shot for about a week, and headed to Law Vegas." In an April 26, 2018 email to USADA,

Respondent stated that he did not know he was “going to the tournament until 3 days before [the start of the event].”

14. Respondent testified that he was not aware of drug testing at the Vegas Shoot because he had not participated in professional events in a number of years and had not reviewed the event’s rules and requirements because of his “very last minute” decision to participate in the event.

15. In January 2018, NFAA sent Respondent a magazine titled “2018 - Vegas Edition & Tournament Preview”. Page 13 of that magazine included the anti-doping rules for the competition. These rules were also readily available on the event’s website and state:

All Championship Compound Open, Championship Compound Female, Championship Recurve Male & Championship Recurve Female participants may be subject to testing in accordance with the World Anti-Doping Code and the World Archery Anti-Doping Rules. Failure to comply with the Anti-Doping rules shall result in disqualification and forfeiture of any cash prizes.

All archers that place in the top 3 of their Championship divisions will be subject to testing in accordance with WADA’s World Anti-Doping Code and the World Archery Anti-Doping Rules. All other participants may be chosen at random. Senior, Young Adults and Barebow competitors are exempt. For details, visit worldarchery.org/Clean-Sport.

The U.S. Anti-Doping Agency (USADA) will handle the doping administration for the Vegas Shoot, including Therapeutic Use Exemptions (TUE) and testing. Please see the links below for more information. [Links to TUE, TUE FAQ, GLOBAL DRO, and Additional USADA Resources]

16. Respondent testified at the hearing that he does not remember receiving the magazine and, although he is computer literate and easily could have reviewed the rules on the event’s website, he did not do so because his decision to participate was made at the “very last minute.”

17. Allara Walters, NFAA’s Membership Coordinator at the time of the Vegas Shoot, testified that on February 8, 2018, she handled Respondent’s onsite registration for the Vegas

Shoot and specifically advised him that drug testing would be conducted at the event. She testified that Respondent acknowledged that he understood and consented to drug testing and directed her to sign his name on the electronic waiver form required as a condition to registration.

18. Respondent testified that he did not understand that he was required to consent to drug testing and denies that he did not consent to have anyone sign his name to the electronic waiver form during onsite registration.

19. After Respondent won the Vegas Shoot, he was notified that he had been selected for doping control. Respondent consented to the doping control process and in the declaration section of his doping control form, he declared his use of propranolol. At the hearing, Respondent testified that in 2013, a doctor had prescribed propranolol to treat his migraine headaches and presented medical records substantiating that testimony. He also admitted that he had taken the regular two-doses-per-day during the Vegas Shoot.

20. On March 5, 2018, USADA notified Respondent that he had tested positive for propranolol and for carboxy-THC above the decision limit of 180 ng/mL. Propranolol is prohibited at all times in sport and is in the class of Beta Blockers on the WADA Prohibited List adopted by the USADA Protocol and the World Archery Federation Anti-Doping Rules. THC is the active ingredient in marijuana and is prohibited in-competition only. It is in the class of Cannabinoids on the WADA prohibited List adopted by the USADA Protocol and the World Archery Federation Anti-Doping Rules.

21. In the notification letter USADA (1) requested an explanation for the presence of the two prohibited substances; (2) requested a response as to whether Respondent wanted his B sample tested; and (3) provided Respondent the option of accepting a provisional suspension.

22. After USADA follow-up by email and phone, Respondent requested more time to decide about his B sample being tested. Due to delays by Respondent in addressing the testing of his B sample or accepting the findings from his A sample, the laboratory analyzed the B sample, which confirmed the presence of both prohibited substances as indicated by the A sample. On April 16, 2018, USADA sent Respondent the results of his B sample analysis and informed him that his case would proceed to the Anti-Doping Review Board.

23. On April 25, 2018, Respondent indicated that he would apply for a therapeutic use exemption (“TUE”), at which time USADA again requested that he provide an explanation for his positive test as he had provided no response to the requests in the notice letter.

24. Respondent never accepted a provisional suspension.

25. After being notified of his positive test on March 5, 2018, Respondent competed in at least two professional tournaments including Indoor NFAA Nationals March 10-11, 2018, and an event in London, KY on May 31, 2018, the latter being part of another professional circuit known as the Archery Shooter’s Association.

26. At the hearing, Bruce Cull, the NFAA Foundation President, and Brittany Salonen, the NFAA Foundation Event Director, testified that during a conversation they had with Respondent at the NFAA Nationals, Respondent acknowledged that Ms. Walters did inform him of the anti-doping waiver during on-site registration for the Vegas Shoot and that he did direct her to electronically sign his name to acknowledge the waiver and complete his registration.

27. On May 30, 2018, Respondent submitted a TUE application for his use of propranolol, which was granted by Respondent on June 6, 2018, prospectively in national competitions. On June 13, 2018, Respondent requested a retroactive TUE, but because the Vegas Shoot was sanctioned by the World Archery Federation, his request was forwarded to

World Archery. On August 14, 2018, World Archery denied Respondent's request for a retroactive TUE and also denied his application for a prospective TUE because, *inter alia*, "other medications exist which are not on the WADA List of Prohibited Substances which can produce the same therapeutic effect without posing the risk of providing a competitive advantage to the user."

28. Mr. Eyler's explanation of the THC positive was confusing and contradictory. He indicated at various times during the investigation and the hearing that it could have been due to using a vape pen containing THC oil or due to ingestion of THC-infused brownies or cookies. With respect to the purported ingestion of infused brownies or cookies, his testimony and the testimony of his wife varied on significant details, including where and when this occurred, and Mr. Eyler refused to provide contact information for witnesses who he indicated had relevant information. Information corroborating use of a vape pen with THC oil likewise was not provided. Mr. Eyler's testimony in this respect was evasive.

DISCUSSION

29. In this case, because Respondent does not contest the propriety of the collection, handling, testing or results of his sample taken at the Vegas Shoot, the facts establish that violations of Articles 2.1 and 2.2 occurred, and the only issue to be decided is the resulting sanctions.

30. The relevant rules place responsibility for every substance that enters an athlete's body squarely upon the shoulders of the athlete. Article 2.2.1 of the WAF ADR and the Code recognizes this duty of strict liability:

It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body and that no *Prohibited Method* is *Used*. Accordingly, it is not necessary that intent, *Fault*, negligence or knowing *Use* on the *Athlete's* part be demonstrated

in order to establish an anti-doping rule violation for *Use of a Prohibited Substance* or a *Prohibited Method*.

31. Article 10.2 of the WAF ADR and the Code provides that the period of ineligibility for these violations is two years unless the Anti-Doping Organization can establish that the anti-doping rule violation was intentional in which case the period of ineligibility would be four years. USADA does not allege in this case that Respondent's use was intentional or seek a four-year period of ineligibility in this case.

32. Article 10.5 of the WAF ADR and the Code provides that allows for a reduction of the two-year period of ineligibility if the Respondent establishes by "a balance of probability" (1) the source of his positive test and (2) that he has no significant fault or negligence for the violation.

33. Respondent has met his burden of establishing by a balance of the probabilities the source of his positive test with respect to propranolol. He has not, however, met that burden with respect to THC. The testimony and facts regarding how the THC came to be present in his body are inconsistent and contradictory with respect to the source, manner, timing and location of the ingestion, and his testimony in this respect was obviously evasive. Although it may be understandable that, given the illegality of marijuana, Respondent may wish to protect himself and/or third parties that he alleges might have responsibility or relevant information, that does not excuse his burden to establish to a balance of the probability the source of his positive test.

34. Nor has Respondent met his burden to prove no significant fault or negligence. In this respect, USADA persuasively relies on *USADA v. Bailey*, a recent CAS case analogous to Respondent's situation in that it involved an experienced athlete who made a last-minute decision to go to a competition and took a supplement borrowed from a teammate the day before that competition. The borrowed supplement contained (as indicated on the label) a substance

prohibited in-competition. Bailey took no steps to inform himself of the risks associated with taking this supplement the day before a competition and tested positive the following day after competing, failing to declare the supplement on his doping control form. The CAS Panel imposed a two-year sanction (reversing the AAA Panel's imposition of a six-month sanction) reasoning that "Mr. Bailey wholly failed in his duty of care to prevent the ingestion of a prohibited substance" and that his "conduct was a marked departure from the expected standard of behavior of an athlete of his age and experience." As the panel quipped, "it is hard to see how Mr. Bailey could have done less."

35. Moreover, Respondent's excuse in this case is similar to that of a motorist whose defense to a traffic violation is that he got a late start for his destination and did not have time to observe the traffic laws. Embellishing that excuse by pleading lack of familiarity with the traffic laws would not help that motorist. If these were valid excuses, the traffic laws - and the doping rules - would be meaningless.

36. For these reasons, the period of ineligibility must be two years.

37. Article 10.11 of the WAF ADR and the Code provide that the period of ineligibility generally starts on the date of the final hearing decision unless (1) there have been substantial delays in the hearing process not caused by the athlete, (2) the athlete makes a timely admission of a violation before the athlete competes again, or (3) the athlete accepts a provisional suspension. None of those exceptions applies in this case: there were no substantial delays not caused by Respondent; Respondent competed on March 10-11, 2018, after he was notified by USADA of the positive test on March 5, 2018, and well before he even communicated with USADA; and Respondent did not accept a provisional suspension. Consequently, the two-year period of suspension must begin on the date of this Award.

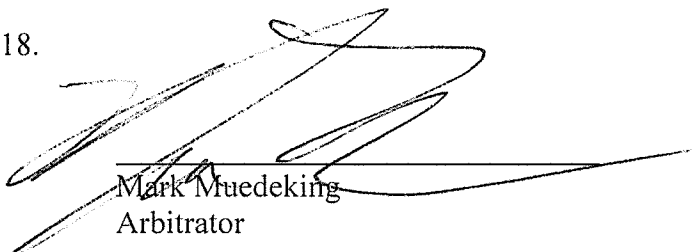
38. Article 9 of the WAF ADR and the Code provides that an anti-doping rule violation in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of any medals, points and prizes. Consequently, Respondent's results from the Vegas Shoot are disqualified and he forfeits the \$52,000 prize.

39. Article 10.8 of the WAF ADR and the Code provides that all other competitive results of the athlete obtained from the date a positive sample was collected through the commencement of any ineligibility period, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes. Nothing in the facts presented in case indicates that fairness would preclude the application of Article 10.8. Consequently, all of Respondent's competitive results from February 11, 2018, through the date of this Award are disqualified, including but not limited to the results from the Indoor NFAA Nationals held on March 10-11, 2018, and the event in London, Kentucky held on May 31, 2018.

40. The Administrative Fees of the AAA, arbitrator compensation and expenses are to be borne by USADA.

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

Dated this 28th day of September 2018.


Mark Muedeking
Arbitrator