

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

In the Matter of Arbitration Between:

Re: 77 190 E 00389 09 JENF
United States Anti-Doping Agency
and
David Mr. Clinger

Preliminary Award Regarding Provisional Suspension

This matter came before the Panel as a consequence of the United States Anti-Doping Agency's ("USADA") determination that a provisional suspension should be imposed upon U.S. cyclist David. Clinger ("Mr. Clinger") pursuant to Article 12(a) of the USADA Protocol for Olympic and Paralympic Movement Testing (the "Protocol") and Article 7.5.1 of the World Anti-Doping Code (the "Code").

1. A telephonic probable cause hearing (the "Provisional Hearing") was held on September 3, 2009 on the question of whether USADA's decision to impose a provisional suspension against Mr. Clinger shall be upheld.
2. The UCLA laboratory reported an Adverse Analytical Finding on Mr. Clinger's A Sample collected in competition on July 30, 2009 (Sample #1527685) for two Prohibited Substances (neither of which is a "Specified Substance" within the meaning of Article 4.2.2 of the Code). In accordance with Article 7.5.1 of the Code, USADA is required in such circumstances to impose a provisional suspension promptly after review whether an applicable therapeutic use exemption has been granted or there is any apparent departure from the standards applied to laboratories.
3. As required by Section 7.2 of the Code, USADA notified Mr. Clinger by letter dated August 26, 2009 which was received on August 30, 2009 that he has until August 31, 2009 to accept a provisional suspension. Since Mr. Clinger did not accept the provisional suspension proposed by USADA by August 31, 2009, USADA requested by letter dated September 1, 2009 which Mr. Clinger received on September 3, 2009, that the Panel schedule a Provisional Hearing and render its determination on or before September 4, 2009.
3. The sole issue for the Panel to determine is whether USADA's decision that a provisional suspension should be imposed shall be upheld, based on whether probable cause exists for USADA to proceed with a charge of an anti-doping rule violation against Mr. Clinger. To establish probable cause, in accordance with Article 7.5.1 of the Code, it is not necessary for any B Sample analysis to have been completed.

The Panel, being duly advised, hereby finds:

- a. USADA complied with the review and notification requirements of the Code and by supplying Mr. Clinger, prior to the Provisional Hearing, on August 30, 2009 with any and all laboratory documentation in the possession of USADA for Sample #1527685.

- b. USADA has met its burden of showing that probable cause exists for USADA to proceed with a charge of an anti-doping rule violation against Mr. Clinger. The Panel therefore upholds USADA's decision to impose a provisional suspension against Mr. Clinger (the "Provisional Suspension").
- c. The Provisional Suspension shall make Mr. Clinger ineligible to participate in any "Competition or Event", as such are defined in the Code, or from membership or inclusion upon any team organized or nominated by the United States Olympic Committee or any National Governing Body.
- d. The Provisional Suspension shall be in effect until the final hearing has been held and an award issued by the Panel or until the earlier of one of the following events: USADA and Mr. Clinger agree to a sanction, USADA withdraws its case against Mr. Clinger, or Mr. Clinger withdraws his request for arbitration or fails to prosecute his case resulting in imposition of a sanction.
- e. Mr. Clinger shall be entitled to have his case heard pursuant to the Expedited Track set forth in Section 13 of the Protocol, if he submits to the Panel a written request for such expedited treatment within three (3) business days from September 3, 2009.
- f. The parties shall bear their own costs and attorney's fees.

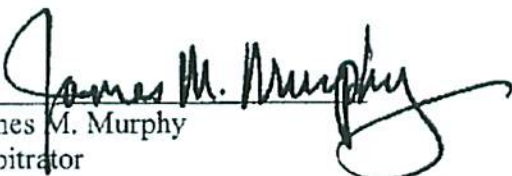
James M. Murphy
Arbitrator

Maidie E. Oliveau
Chair

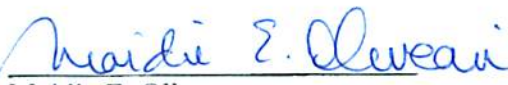


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