

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the matter of the Arbitration between

UNITED STATES ANTI-DOPING)
AGENCY,)
)
 Claimant)
)
And)
)
SABINA ALLEN,)
)
 Respondent.)
_____)

AAA Case No. 01-21-0018-0951

FINAL AWARD

Pursuant to the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes (effective as revised January 1, 2021) (“Arbitration Procedures”) as contained in the Protocol for Olympic and Paralympic Movement Testing (effective as revised January 1, 2021) (the “USADA Protocol”), and pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, et seq. (the “Act”), an evidentiary hearing was held via video conference on June 1, 2022, before the duly appointed arbitrator David M Benck.

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties do hereby FIND and AWARD as follows:

Introduction and Procedural History

1. Claimant, the United States Anti-Doping Agency (“USADA”), as the independent anti-doping agency for Olympic Sports in the United States, is responsible for conducting drug testing and for adjudication of any positive test results and other anti-doping violations pursuant to the USADA Protocol. USADA, as the National Anti-Doping Organization is required by World Anti-Doping Code (WADA Code) §20.5.7, “to vigorously pursue all potential anti-doping rule violations within its jurisdiction.”
2. USADA was represented in this proceeding by Jeff T. Cook, Esq., USADA General Counsel, Spencer Crowell, Esq., USADA Olympic & Paralympic Counsel, Nadia Silk, USADA Legal Affairs Director and Katie Crouse, USADA Olympic & Paralympic Programs Paralegal.
3. Respondent is a 27-year-old track and field athlete and former high-level collegiate competitor who competes in long jump, triple jump, and various sprinting disciplines. She participated in the 2018 NCAA Division I Outdoor Track and Field National Championships, and she has placed in various meets throughout Georgia, Virginia, North

Carolina, Florida, and California.

4. Respondent appeared pro se in these proceedings.
5. USADA collected an in-competition sample from Respondent on May 29, 2021, at the Chula Vista Field Festival—a USA Track and Field sanctioned event—where Respondent placed first in the long jump event. On the Doping Control Form, Respondent declared “2 ¼ [can] Red Bull” but declared no other supplements or medications.
6. USADA sent Respondent’s sample to the WADA-accredited laboratory at UCLA in Los Angeles, California. The laboratory reported Respondent’s sample as an Adverse Analytical Finding (“AAF”) for the presence of phentermine and di-hydroxy-LGD-4033, a metabolite of LGD-4033. Phentermine and LGD-4033 are both classified as non-specified substances according to the World Anti-Doping Agency Prohibited List (the “Prohibited List”). LGD-4033 is prohibited at all times, while phentermine is prohibited only in-competition. Phentermine is a stimulant, while LGD-4033 is a Selective Androgen Receptor Modulator (“SARM”), in the category of anabolic agents.
7. On June 24, 2021, USADA sent Respondent a letter notifying her that she had tested positive for di-hydroxy-LGD-4033 and phentermine and imposed a provisional suspension. Respondent requested analysis of her B sample, and the B sample analysis confirmed the presence of di-hydroxy-LGD-4033 and phentermine on July 8, 2021.
8. On July 14, 2021, USADA charged Respondent with anti-doping rule violations (“ADRVs”) for the presence of di-hydroxy-LGD-4033 and phentermine in her sample and the use and/or attempted use of LGD-4033 and phentermine pursuant to Articles 2.1 and 2.2 of the World Anti-Doping Code (the “WADA Code”), respectively.
9. On July 24, 2021, Respondent requested to stay proceedings so that she could test her supplements.
10. On December 16, 2021, Respondent requested a hearing.
11. Prior to commencement of the hearing the Parties submitted pre-hearing briefs, offered exhibits, and listed potential witnesses as provided for in Preliminary Hearing and Scheduling Order.
12. On June 1, 2022, the Arbitrator held a full evidentiary hearing by video conference in which both USADA and Respondent participated.
13. At the request of USADA, the Arbitrator issued a summons (subpoena) on May 23, 2022, pursuant to R-26e of the Arbitration Procedures and Section 7 of the United States Arbitration Act6 (9 U.S.C. § 7) for the appearance and testimony of a witness at the hearing.
14. During the hearing, the Parties called witnesses to testify. Each Party was afforded the opportunity to ask questions of the witnesses and did so as they considered necessary.
15. The Arbitrator heard from the following witnesses, all of whom were sworn and provided

testimony without objection:

- Sabina Allen, Respondent.
- Dr. Matthew Fedoruk
- Victor Burgo

16. The Parties submitted numerous exhibits, which were admitted into evidence at the start of the hearing without objection.
17. The Parties also provided opening and closing statements and gave arguments and presented their positions on various issues that arose during the hearing.
18. The Parties mutually declined to submit post-hearing briefs.
19. At the conclusion of the hearing the Arbitrator inquired of the Parties whether they had “further proofs to offer or witnesses to be heard.” And the Parties indicated that they did not. Neither Party disputed the AAA’s jurisdiction over this matter or that Respondent is properly subject to this proceeding. Both Parties participated in this proceeding without objection, and expressly indicating satisfaction with the fairness of the hearing and their opportunity to be heard. Additionally, neither Party objected to the Arbitrator designated to hear this matter.
20. The Arbitrator declared the hearing closed as of June 1, 2022.

JURISDICTION

21. This matter is properly before the AAA and this Arbitrator.
22. Respondent and USADA both stipulated that the USADA Protocol and the World Athletics Anti-Doping Rules (“WA ADR”) “governs all proceedings involving” the subject urine sample.
23. Further, this arbitration was conducted by concurrence of the Parties.
24. USADA notified Respondent that she was being charged with ADRVs and further advised Respondent that if she chose to contest the sanction proposed by USADA, she had the right to request a hearing before the AAA.
25. Respondent responded via email stating that she would like to proceed to a hearing on her ADRV.
26. The AAA has been designated as the independent arbitral body to hear anti-doping disputes in the U.S per the Protocol for Olympic and Paralympic Movement Testing Annex C Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes, as of January 2021.

BURDEN AND STANDARD OF PROOF

27. The WADA Code charges athletes with the responsibility for every substance that enters their bodies. The WADA Code recognizes this duty of strict liability:

It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in the Samples. 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 under Article 2.1.

28. The WADA Code further states that sufficient proof of an ADRV is established by the "presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample . . . where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample." Respondent's B Sample confirmed the presence of both di-hydroxy-LGD-4033 and phentermine, and as confirmed by Dr. Fedoruk in his expert report, the WADA-accredited laboratory analysis.

29. Once a violation has been established, the next step is to determine the appropriate sanction length. The default period of ineligibility for an ADRV involving a non-specified substance is four years unless the athlete can establish by a balance of probabilities that the ADRV was unintentional, in which case the period of ineligibility shall be two years. The WADA Code provides for a further reduction in the period of ineligibility if the athlete can establish no significant fault or negligence, and a reduction is appropriate based on a degree of fault analysis. LGD-4033 (and its metabolites) and phentermine are non-specified substances. Therefore, the default period of ineligibility is four years unless and until Respondent could prove otherwise.

30. The applicable sections of the WADA Code provide, in part:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B

Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or where the Athlete's A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, International Standards, or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances.

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies 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.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.

10. Sanctions on Individuals

10.1 Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs. An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.

10.1.1 If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.

10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method. The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional. 10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

10.2.4 Notwithstanding any other provision in Article 10.2, where the anti-doping rule violation involves a Substance of Abuse:

10.2.4.1 If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, then the period of Ineligibility shall be three (3) months Ineligibility. In addition, the period of Ineligibility calculated under this Article 10.2.4.1 may be reduced to one (1) month if the Athlete or other Person satisfactorily completes a Substance of Abuse treatment program approved by the Anti-Doping Organization with Results Management responsibility. The period of Ineligibility established in this Article 10.2.4.1 is not subject to any reduction based on any provision in Article 10.6.

10.2.4.2 If the ingestion, Use or Possession occurred In-Competition, and the Athlete can establish that the context of the ingestion, Use or Possession was

unrelated to sport performance, then the ingestion, Use or Possession shall not be considered intentional for purposes of Article 10.2.1 and shall not provide a basis for a finding of Aggravating Circumstances under Article 10.4.

SUMMARY OF FACTUAL FINDINGS

Phentermine

31. Respondent initially told USADA in December 2021 that she had consumed a smoothie which her friend, “Dewayne Sherland” gave her a few days before the competition, and unbeknownst to her contained phentermine. Respondent sent an email proclaiming that “a couple days” before her sample collection, she remembered that she “drank from a cup in [a friend’s] kitchen that contained a smoothie” that had phentermine in it. She said that a friend named “Dwayne Sherland,” recently informed her that he had put phentermine in the smoothie that he shared with her.
32. Respondent later claimed that “Dewayne Sherman” shared a smoothie with her about a week before competing at the Chula Vista meet in California on May 29, 2021. She later asked Mr. Sherman about the smoothie in December 2021 and Respondent claims that Mr. Sherman told her that he inadvertently added an unknown weight loss compound to the smoothie that day and forgot about it.
33. Respondent provided USADA with contact information for Mr. Sherland to verify her explanation. When USADA conducted a telephonic interview of “Dewayne Sherland,” on December 16, 2021, at (XXX) XXX-8094, he confirmed that he made the smoothie for Respondent the morning of her competition. During the interview, “Mr. Sherland” stated that he works in the water restoration business; he and Respondent were old friends from Jamaica; and they have known each other for eight or nine years. Mr. Sherland said that in May 2021 he accompanied Respondent to her track meet in California for the competition and added that “early in the morning” before the competition, he had made Respondent a drink containing bee pollen, bitter melon powder, ginseng, aloe vera, red bull and he intentionally included an “Axcion” pill to give her energy. Axcion is a Mexican brand name for a phentermine pill.
34. Respondent testified that Mr. Sherland and Mr. Sherman are the same individual, and that misspellings had occurred, but that Mr. Sherland is the actual individual. During the December 16, 2021, interview with USADA, Mr. Sherland confirmed the correct spelling of his name as “Sherland.”
35. Notwithstanding, USADA alleges that neither Mr. Sherland nor Mr. Sherman exist and are in fact aliases of an individual known as Mr. B. (last name being withheld) who assisted Respondent with an anti-doping cover up effort.

LGD4033

36. Respondent claims that in early 2021, she began taking Gat Sport Jetfuel and Testro-X Dietary Supplement (“Jetfuel”) which she stopped using around late March to early April 2021.

37. Respondent claims that she received the Jetfuel supplement from her sister in Jamaica, who bought the supplement using the Amazon account of her friend, “James Davis,” and had the supplement shipped to “Mr. Davis” in New York.
38. According to an Amazon receipt dated January 16, 2021, the supplement was delivered to the same address where Mr. B lives. “Mr. Davis” then allegedly sent the supplement to Respondent.
39. USADA was made aware by law enforcement that Mr. B and Respondent were in communications via text messages from June 2021 through December 2021. USADA alleged that Mr. B was suspected of being involved in a separate anti-doping cover up.
40. On April 28, 2022, USADA interviewed Mr. B at his residence which was the same address where Mr. Davis allegedly lived. Mr. B provided his phone number of (XXX) XXX-8094, the same number at which USADA previously interviewed Mr. Sherland. He also said he worked in water restoration—the same occupation as Mr. Sherland—and he used to live next door (one digit off) to the address that Mr. Sherland provided when interviewed.
41. Mr. B denied ever going by the aliases Dewayne Sherland or Dewayne Sherman, and he added that did not know anybody by either of those names, nor did he know anyone named James Davis, who also purportedly had the same address.
42. Mr. B stated that he knows of Respondent, but he had never met her in person before, was not present in California with her during her competition in May 2021, and never gave her a smoothie.
43. He said he only knew Respondent through her coach and her uncle from Jamaica. Mr. B explained that his only involvement in this case consisted of Respondent’s coach and uncle asking him to serve as Respondent’s representative and witness at the B Sample opening at the Laboratory in California.
44. On June 24, 2021, Respondent sent her open Jetfuel to be tested at the Sports Drug Testing Laboratory.
45. On August 31, 2021, the WADA-accredited laboratory in Salt Lake City, Utah (“Laboratory”) reported that Respondent’s Jetfuel supplement tested positive for extremely high levels of LGD-4033 in the four capsules analyzed (one of the capsules had a smaller amount but was still very high) as well as ostarine and RAD140 in three of the four capsules analyzed. The Laboratory did not detect phentermine in the supplement. The Laboratory noted that the open Jetfuel container contained only 16 capsules when it arrived for testing. The supplement label indicates that each container contains 120 capsules.
46. USADA obtained a different, sealed container of the Jetfuel supplement from a different lot number and shipped it to the Laboratory for analysis. On November 19, 2021, the Laboratory reported that the sealed container sourced by USADA contained no banned substances.

47. The Jetfuel supplement were capsules, capable of being opened and resealed and contained extremely high amounts of LGD-4033, which is suggestive of manual manipulation. USADA's expert Dr. Fedoruk, testified that the amount of LGD-4033 found in the supplement was 30-60 milligrams per capsule which is *thirty times the maximum* therapeutic dose used in studies to test the safety and efficacy of the substance.
48. According to Dr. Fedoruk, [t]hese high amounts of LGD-4033 in the supplement product are highly suggestive of manual manipulation of the supplement product with LGD-4033, as it would be very abnormal (and highly illegal) to observe such high concentrations of an unapproved pharmaceutical with anabolic properties in a supplement product.
49. The LGD-4033 and other anabolic agents detected in the supplement were out of place in a supplement not even advertised for muscle building properties and calls into question Respondent's claim that the supplement was contaminated as opposed to having been manually manipulated.
50. The Jetfuel supplement contained other prohibited substances in addition to LGD-4033. Testing revealed the presence of both ostarine and RAD140 in addition to the LGD-4033, yet neither ostarine nor RAD140 were detected in Respondent's urine sample. Both ostarine and RAD140 are classified as non-specified substances in the category of anabolic agents, and they are both included on the World Anti-Doping Agency's Prohibited List.

DISCUSSION AND MERITS

51. While the Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, only the submissions and evidence considered necessary to explain the Arbitrator's reasoning are referred to in this Award.
52. This case arises from Respondent's in-competition sample collected on May 29, 2021, that tested positive for di-hydroxy-LGD-4033 and phentermine, two non-specified substances that would have aided her first-place finish at the Chula Vista Field Festival.
53. The culmination of all the evidence was more than adequate to comfortably satisfy the Arbitrator and establish that an ADRV occurred, bearing in mind the seriousness of the allegation which was made.
54. The Arbitrator finds that the Respondent did possess, or use prohibited, performance enhancing substances.

Respondent does not Qualify for any Reduction from the Default Four-Year Sanction.

55. Respondent is charged with the use of LGD-4033 and phentermine under Article 2.1 of the WADA Code and the presence of di-hydroxy-LGD-4033 and phentermine under Article 2.2 of the WADA Code. The default sanction for each violation is four years, and no reduction from that default period is appropriate.
56. Respondent's varied explanations for the positive result for phentermine failed to establish that her use was unintentional. And Respondent's Jetfuel supplement shows signs of

probable manual manipulation—not contamination through the manufacturing process.

57. Finally, and importantly, Respondent testified that “I know the evidence I have is not sufficient” to qualify for a reduction in the default four-year sanction, and she has therefore not met her burden for any reduction from the default four-year period of ineligibility.

Respondent failed to demonstrate that her use of phentermine was unintentional.

58. Phentermine is only prohibited in-competition, so to establish that her use was not intentional, Respondent must show by a balance of probabilities that her use occurred out of competition and that it was used in a context unrelated to sport performance. Respondent’s inconsistent claims cannot satisfy her burden.

59. Mr. B and Respondent were in frequent contact between the time of her sample collection and the time when Respondent claims she was told for the first time that her drink was spiked with phentermine. This combined with confusion as to why Mr. B would have the same phone number and essentially same address as Mr. Davis and Mr. Sherland, prevented Respondent from convincing the arbitrator of the probability of her claims.

60. Many CAS panels have identified what evidence athletes must provide to meet their burden. As the CAS panel in *WADA v. Swiss Olympic & Daubney* stated, “the ‘balance of probability’ standard entails that the Athlete has the burden of convincing a panel or a sole arbitrator that the occurrence of the circumstances, on which the Athlete relies, is more probable than their non-occurrence.”

61. The only evidence Respondent has presented that she used phentermine out-of-competition and unrelated to sport performance are her own varying explanations in which she attempts to corroborate through a possibly fictitious witness that did not testify and could not be verified.

62. Finally, and importantly, Respondent testified that “I know the evidence I have is not sufficient” to demonstrate that the usage was unintentional, and Respondent is therefore unable to meet her burden and show that her phentermine use was unintentional, and she does not qualify for any reduction from the four-year default period of ineligibility.

Respondent failed to show that the supplement containing LGD-4033 was contaminated.

63. Respondent argues that her positive test for di-hydroxy-LGD-4033 stems from a contaminated supplement. “In cases where the athlete can establish both no significant fault or negligence and that the detected prohibited substance came from a contaminated product, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years ineligibility depending on the athlete’s degree of fault.”

64. If an athlete can establish that her use was unintentional, the period of ineligibility is two years. Otherwise, the sanction is four years.

65. Respondent carries the burden of proving supplement contamination by a balance of

probabilities. Respondent failed to establish that the Jetfuel supplement was contaminated.

66. The purchase of the Jetfuel supplement is suspiciously circular. Respondent's sister ordered the supplement using "James Davis" Amazon account and on January 17, 2021, it shipped to "Mr. Davis" at an address that is the same as Mr. B's current residence. There is no public record of anyone named "James Davis" ever living at that address, yet USADA interviewed Mr. B at this very address and public records confirm his association with that address. "James Davis" then sent Respondent the Jetfuel supplement at the request of Respondent's sister.
67. "James Davis" is one of multiple individuals with no public records associated with his name, that all claim the same address where Mr. B does lives, each with their own role in Respondent's defense.
68. When the Laboratory received the open Jetfuel container, there were only 16 capsules remaining. The information on the Jetfuel label indicates that a full bottle contains 120 capsules, which means that Respondent used over 100 capsules before sending the container to the Laboratory for testing.
69. As referenced above, in *Tarnovschi v. ICF*, an athlete tested positive for the non-specified Substance GHRP and claimed that a contaminated supplement caused his positive test. An open container of his supplement tested positive for GHRP, but other sealed containers did not. The CAS panel concluded that an open container testing positive for the prohibited substance, without any corroborating evidence of contamination, was not enough to prove an absence of intent. The panel stated:

As a starting point, in the Panel's opinion it would be all too easy for an athlete to spike an open container of a food supplement with the prohibited substance for which he had tested positive, send such "mix" to a testing institute which would obviously return a positive for that very substance, and then claim that this proves that it was contamination of a product which he took in all innocence, which was responsible for the AAF.

The Panel does not say, indeed cannot say, that this is actually what happened in the case in hand. What it both can and does say is that the Appellant must fail to discharge his burden of proving absence of intent, unless he comes forward with corroborating evidence to support his theory. Without such corroborating evidence, when deconstructed, the Appellant's theory is nothing other than a more sophisticated way of saying "I do not know how the prohibited substance entered my system but I did not knowingly take it." It is common ground that a statement of this kind does not suffice to disprove an assumed intentional anti-doping rule violation.

70. Here, just as in *Tarnovschi*, the only evidence offered in support of Respondent's contamination theory is the open container Respondent sent to the Laboratory for testing. There is no sealed container confirming the presence of LGD-4033. And as in *Tarnovschi*, there were abnormally high amounts of the prohibited substance found in the opened

supplement container.

71. Finally, and importantly, Respondent testified that “I know the evidence I have is not sufficient” to demonstrate that the usage was unintentional, and Respondent is therefore unable to meet her burden and show that her LGD-4033 was unintentional and caused by the Jetfuel supplement. She does not qualify for any reduction from the four-year default period of ineligibility.

Aggravating Circumstances

72. In some circumstances, an athlete’s egregious conduct can qualify as aggravating circumstances, and USADA argued that Respondent’s conduct has crossed that threshold here. Aggravating circumstances are defined as:

Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the *Athlete or other Person Used or Possessed multiple Prohibited Substances* or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or *committed multiple other anti-doping rule violations*; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; *the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation*; or *the Athlete or other Person engaged in Tampering during Results Management*. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.

73. Article 10.4 of the WADA Code provides that if aggravating circumstances are present, the period of Ineligibility otherwise applicable shall be increased by an additional period of ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that he or she did not knowingly commit the anti-doping rule violation.
74. Here, USADA argued that Respondent fabricated a story to absolve her of liability for her phentermine and LGD-4033 positives and enlisted the assistance of Mr. B to implement her fabricated scheme. USADA alleged that Mr. B sent text messages in the cover up of another athlete’s positive test around the same time.
75. Additionally, testing positive for multiple prohibited substances is an independent basis for imposing aggravating circumstances. USADA argued that due to the lengths Respondent went to cover up her doping activity by creating false narratives, creating fake identities, enlisting the services of at least one other individual to lie on her behalf to USADA, and the seriousness of her doping conduct (having tested positive for two non-specified substances), that it was appropriate to add an additional two-year period of ineligibility to

the default four-year period of ineligibility.

76. While the uncertainty involving the individual or individuals participating in the investigation prevented Respondent from meeting her burden of proof, and while the arbitrator was highly suspicious of the numerous witnesses that had the same address and phone numbers, ultimately, the arbitrator lacks adequate evidence that Mr. B was impersonating other individuals in the case, and as such, declines to find aggravating circumstances in this case.

DECISION

77. The Arbitrator therefore rules as follows:

A. Respondent has committed anti-doping rule violations under Articles 2.1 and 2.2 of the WADA Code and WA ADR Presence and Use of prohibited substances.

B. Respondent does not qualify for any reduction from the four-year default period of ineligibility.

C. USADA failed to establish that aggravating circumstances were present and that the period of Ineligibility should be increased.

D. The start date of Respondent's period of ineligibility is the date of her provisional suspension, June 24, 2021, and the period of ineligibility expires on June 23, 2025. USADA provisionally suspended Respondent on June 24, 2021, the date USADA sent Respondent the notice letter.

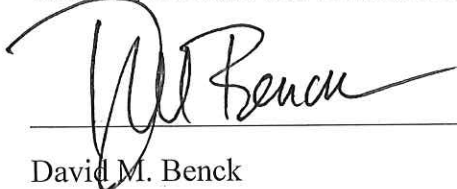
E. Pursuant to Article 10.1 of the WADA Code, Respondent's results from the Chula Vista Field Festival on May 29, 2021, through the commencement of her provisional suspension on June 24, 2021, are hereby disqualified.

F. The Parties shall bear their own attorneys' fees and costs associated with this Arbitration.

G. The administrative fees of the AAA and the compensation and expenses of the Arbitrator shall be borne by the USOPC.

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

Ordered, Decided and Awarded this the 8th day of June 2022.



David M. Benck