

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

**Re: AAA No. 77 190 00587 13 JENF
United States Anti-Doping Agency (“USADA”)
and
Walter Davis (“Respondent” or “Mr. Davis”)**

FINAL AWARD

I, the undersigned ARBITRATOR, having been designated by the above-named parties, having duly heard the proofs and allegations of the parties, hereby issue this AWARD, as follows:

I. INTRODUCTION

- 1.1 USADA is the independent anti-doping agency for Olympic movement sports in the United States of America and is, among other things, responsible for in- and out-of- competition sample collection, drug testing, results management and the adjudication of potential anti-doping rule violations pursuant to the USADA Protocol for Olympic and Paralympic Movement Testing (the “USADA Protocol”).**
- 1.2 Respondent is a 34 -year old USA Track & Field (“USATF”)**

registered athlete who was in the USADA Registered Testing Pool (“USADA RTP”) from 2001 through the third quarter of 2013.

1.3 In accordance with the requirements of the 2012 World Anti-Doping Agency International Standard for Testing (“WADA IST”) and the 2011 USADA Whereabouts Policy (“Policy”), athletes in the USADA RTP, including Mr. Davis, are required to provide accurate and timely whereabouts information to facilitate and enable out-of-competition athlete testing. Any combination of three missed tests and/or filing failures within an eighteen-month time period results in an anti-doping rule violation.

1.4 USADA charged Respondent with a first anti-doping rule violation for failing on three separate occasions, between July 1, 2012, and July 1, 2013, to properly file his whereabouts information.

1.5 During a preliminary hearing conference call on January 9, 2014, in which both parties participated, Respondent conceded that he had failed to timely provide the required information on three separate occasions within an eighteen-month time period, but claimed he did not do so in order to avoid out-of-competition

testing. Mr. Davis during the conference call stated that he would be engaging counsel to represent him.

1.6 An evidentiary hearing was held by teleconference on March 25, 2014. Neither Respondent, nor counsel acting on his behalf, participated in the evidentiary hearing or otherwise following the preliminary hearing notwithstanding numerous attempts by the American Arbitration Association administrators and USADA to contact Mr. Davis and encourage him to participate in these proceedings. USADA submitted a pre-hearing brief and presented oral argument and witness testimony at the hearing. Respondent neither appeared nor submitted a pre-hearing brief.

II. FACTS AND ISSUES

2.1 The relevant facts are largely undisputed; namely, that Mr. Davis was included in the USADA RTP and subject to compliance with the Policy.

2.2 Respondent admitted that he failed to timely submit his whereabouts filings on three separate occasions in an eighteen-month period.

2.3 The sole issue is whether Respondent was negligent, as USADA contends and Respondent denies, in failing to submit his whereabouts filings, notwithstanding his admitted failures to do so.

2.4 Respondent's position is that he should not be found to be in violation of the applicable anti-doping rules because each of the whereabouts filing failures was declared against him after he had retired from competition.

2.5 USADA's Athlete Services Lead, Lindsey Roebken, provided testimony concerning the Respondent's responsibilities as an athlete in the USADA RTP and the USADA RTP athlete retirement procedures.

2.6 Ms. Roebken testified that at all relevant times Respondent was in the USADA RTP and that extensive outreach is undertaken by USADA to ensure that athletes in the USADA RTP, including Respondent, are advised of their inclusion in the testing pool and of their whereabouts responsibilities.

2.7 Ms. Roebken further testified that, to her knowledge, neither USADA nor Respondent's national governing body,

USATF, received a retirement notice from Respondent as required by the USADA and USATF Retirement Policies until after a third whereabouts filing failure had been declared against Respondent.

2.8 Ms. Roebken testified knowledgeably and credibly about her responsibilities and the applicable policies and communications involving this matter. Accordingly, and because the Respondent did not attempt to rebut any of the evidence presented by USADA, either prior to or during the evidentiary hearing, USADA's factual contentions are accepted as true.

III. DISCUSSION AND DECISION

3.1 Article 2.4 of the World Anti-Doping Code ("Code") provides:

"2.4 Violation of applicable requirements regarding *Athlete* availability for *Out-of-Competition Testing*, including failure to file required whereabouts information and missed tests which are declared based on rules which comply with the *International Standard for Testing*. Any combination of three missed tests and/or filing failures within an eighteen-month period as determined by *Anti-Doping Organizations* with jurisdiction over the *Athlete* shall constitute an anti-doping rule violation."

3.2 Accordingly, athletes in the USADA RTP are responsible for

complying with the out-of-competition testing requirements, including the whereabouts filing obligations set forth in the Policy.

3.3 An athlete's failure to comply with these obligations will result in a sanction for an anti-doping rule violation. See Code, Art. 2.4.

3.4 Article 11.3 of the WADA IST sets forth, in detail, the "Whereabouts Filing Requirements" for an athlete in a *Registered Testing Pool*. See WADA IST, § 11.3.

3.5 Under Article 11.3.3 of the WADA IST, it was Respondent's responsibility to submit Quarterly Whereabouts Filing with USADA that "provides all of the information required accurately and in sufficient detail to enable any ADO [Anti-Doping Organization] wishing to do so to locate the Athlete for Testing on any given day in the quarter."

3.6 Article 11.3.5 of the WADA IST requires that an Athlete may only be declared to have committed a whereabouts filing failure where each of the following can be established:

"a. that the athlete was duly notified (i) that he was designated for inclusion in a registered testing

pool, (ii) of the consequent requirement to make whereabouts filings; and (iii) of the consequences of any failure to comply with that requirement;

- b. that the athlete failed to comply with that requirement by the applicable deadline;**
- c. (in the case of a second or third filing failure in the same quarter) that the athlete was given notice of the previous filing failure in accordance with Clause 11.6.2(a) and failed to rectify the filing failure by the deadline specified in the notice; and**
- d. that the athlete's failure to comply was at least negligent. For these purposes, the athlete will be presumed to have committed the failure negligently upon proof that he was notified of the requirement yet failed to comply with it. That presumption may only be rebutted by the athlete establishing that no negligent behavior on his part caused or contributed to the failure."**

3.7 The Code provides that violations of Article 2.4 mandate that "the period of *Ineligibility* shall be at a minimum one (1) year and at a maximum two (2) years based on the *Athlete's* degree of fault." Code, Art. 10.3.3.

3.8 Because Mr. Davis is presumed to have committed a whereabouts filing failure "negligently" where it can be established by USADA that it notified him of his filing requirements, as Ms. Roebken credibly testified it did, and Mr.

Davis failed to comply, as USADA established, the burden shifts to Respondent to prove he was not negligent by his failure to comply with the whereabouts filing obligations. The standard of proof for Respondent to rebut the presumption of negligence shall be “by a balance of probability.” See Code, Art. 3.1.

3.9 Although Respondent declined the opportunity to defend his actions at the hearing, given the serious nature of the charges against Mr. Davis, an examination of his conduct with respect to each of his three whereabouts filing failures is appropriate in this instance.

3.10 During the preliminary hearing on January 9, 2014, Respondent claimed he had retired from competition following the 2012 U.S. Olympic Team Trials for Track & Field (“2012 Olympic Trials”). Although Respondent did not provide any evidence to substantiate this claim, as part of its prehearing submissions, USADA produced a video recording of an interview of Mr. Davis from the 2012 Olympic Trials in which he indicated he was going to retire from competition.

3.11 Despite Respondent’s contention that he ceased to fulfill

his whereabouts obligations because he had retired, the testimony provided by Ms. Roebken at the hearing established that neither USADA nor USATF was notified of Respondent's retirement until after a third whereabouts filing failure had been declared against him.

3.12 Respondent's retirement claim is also undermined by his statements and actions following the 2012 Olympic Trials.

3.13 In an email Respondent sent to USADA on August 19, 2013, in response to USADA's declaration of a third whereabouts filing failure against him, Respondent provided the following explanation for each of his whereabouts filing failures:

"...The July 2012 Q3 filing failure happened because I was still upset from not making the Olympic team a few weeks before it was due. I was considering retirement therefore I didn't complete the whereabouts form. I was out looking for a job and no longer in my same full-time training schedule, so filling out a whereabouts slipped my mind. It was not to get out of any test. When the Q1 2013 whereabouts were due, I was still contemplating if I was still going to compete. On top of that, a death in my family to a close relative put me in a different place. I should have filled out the whereabouts but track wasn't even on my mind. The final filing failure in July 2013 happened because I was so extremely busy with work. I just didn't have time to fill it out in a timely manner..."

3.14 In his email, Respondent clearly stated that his first two whereabouts filing failures occurred while he was "considering"

retirement and the third filing failure occurred because he was “extremely busy with work.” There is no mention in Respondent’s August 19 email that any of the Filing Failures occurred after he had actually retired from competition.

3.15 USADA also presented evidence demonstrating that Respondent continued to submit whereabouts information to USADA on an intermittent basis until August of 2013, more than a full year after Mr. Davis claims he retired.

3.16 Although Mr. Davis announced his intention to retire from competition during an interview following the 2012 Olympic Trials, he failed to follow through on his announcement by notifying USADA or USATF of his retirement and failed to act in a manner that is fully consistent with that of a retired USATF registered athlete.

3.17 I conclude, therefore, based on legally sufficient evidence adduced at the hearing that Respondent’s claim that his failures to timely submit his whereabouts filings on three separate occasions in an eighteen-month period was not due to his own negligence must be and is hereby denied.

3.18 USADA established its compliance with the provisions of Article 11.3.5 of the IST, supra at 3.6, in declaring each whereabouts filing failure against Respondent.

3.19 Article 10.3. of the Code provides that there be a sanction ranging from a minimum ineligibility of one year to a maximum of two years for a violation of an anti-doping rule under Article 2.4 of the Code, the exact length of time being based on the Athlete's degree of fault.

3.20 USADA stipulated at the hearing that a period of ineligibility of one year, given the circumstances of this case, is an appropriate sanction for Respondent's anti-doping rule violation.

IV. CONCLUSION

4.1 Respondent has committed a first anti-doping rules' offense for his violation of Article 2.4 of the Code as a result of committing three whereabouts filing violations within an eighteen-month period.

4.2 Respondent is hereby sanctioned for a one-year period of ineligibility commencing on April 16, 2014, and ending at midnight on April 15, 2015.

4.3 Consequently, all competitive results, medals, points and prizes obtained by Respondent on or subsequent to July 1, 2013, the date of his third whereabouts failure, are hereby cancelled with retroactive effect.

4.4 The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the Arbitrator shall be borne as incurred.

4.5 Each party shall bear its own costs, including the fees and expenses of its lawyers and witnesses, if any.

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

Dated this 15th day of April, 2014.



Walter G. Gans, Arbitrator