

Before the American Arbitration Association  
Commercial Tribunal

United States Anti-Doping Agency  
Claimant

Case #01-19-0001-4148

vs

Final Award

Kiara Akuna  
Respondent

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I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the American Arbitration Rules (AAA Arbitration Rules) as modified by the American Arbitration Association Supplementary Procedures for arbitration of Olympic Sport Doping Disputes as contained in the Protocol for Olympic and Paralympic Movement testing, effective January 1, 2009, pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, et seq, an evidentiary was held via teleconference on October 8, 2019, and having been duly sworn and having duly heard the proofs and allegations of the Parties hereby render a Full AWARD as follows.

In this matter, USADA was represented by Jeff Cook, April Oster, and Ted Koehler. Kiara Akuna was originally represented by Douglas Rowsley, who withdrew before the evidentiary hearing and was replaced by John Ferguson, Respondent's stepfather as her representative.

### 1. Background

Kiara Akuna of Port Orange, Florida, is a minor who has been represented in proceeding by her stepfather, John Ferguson following the withdrawal of her attorney, Doug Rowsley on August 19, 2019.

She is a junior weightlifter who competed in the US National Junior Weightlifting championships in Lombard, Illinois on February 16, 2019. On that date, she was selected for in-competition drug testing. Upon arrival at the drug testing station, she declared the prior use of Ibuprofen, Aleve, Zinc, Cissus, and varivax within the previous week. No other drug administration was listed pursuant to the form that states that the information she provided fully and accurately represents my declaration the USADA Doping Control officer and declaration is truthful and complete. A full menu urine test was then performed.

By letter dated March 7, 2019, Lisa McCumber, USADA's Testing Results Manager advised Ms. Akuna that her urine sample #161271 collected at the National Junior weightlifting championships February 16, 2019 was sent to the World Anti-Doping Agency (WADA) accredited laboratory in Los Angeles, California (the laboratory) for analysis and that the laboratory reported that Ms. Akun's A sample found both 17 $\beta$ -hydroxymethyl-17 methyl-18 Norandrost-1,4,13-trien-3-one, a metabolite methandienone, and 4-chloro-18-nor-17 $\beta$ -hydroxymethyl, 17 $\alpha$ -methyl-5 $\alpha$ -androst-13-en-3 $\alpha$ -ol (M3), a metabolite of dehydrochlormethyl testosterone, (DHCMT) or oral turniabol and for other related 4-chlorinated 17 $\alpha$ -methylated anabolic steroids. Methendienone, DHCMT and related anabolic steroids are Prohibited substances in a class of Anabolic Agents on the WADA prohibited list adopted by both the USADA Protocol for Olympic and Paralympic movement testing (the Protocol) and the International Weightlifting Federation (IWF) anti-doping policy.

Ms Akuna was provided with information regarding acceptance of the laboratory's results and a form to do so. Further, she was advised that since her A sample was found to contain prohibited substances in the class of Anabolic Agents, which are non-specified substances within the meaning of the WADA Prohibited List and Article 4.2.2 of the Code, USADA has determined that a provisional suspension should be imposed as provided for in Section 12 of the protocol, consistent with Article 7.9.1 of the Code. She was further advised that due to the imposition of the provisional suspension, she was immediately barred from participating in any competition under jurisdiction of IWF, USA Weightlifting and the USOC until her case is not deemed to be an anti-doping violation, she accepts a sanction, fails to contest the matter or a hearing has been held and a decision is reached in this matter.

She was also advised that under the Protocol and IWF AntiDoping policy, the use of a prohibited substance or method or the finding of a prohibited substance in an athlete's sample constitutes a doping violation.

She was advised that she faced and USADA was seeking up to a four (4) year period of ineligibility beginning on March 7, 2019, the day she received her notice of provisional suspension, disqualification of competitive results obtained on or subsequent to February 16, 2019, including forfeiture of any medals, points and prizes consistent with the IWF Anti-Doping Policy, up to a four(4) year period of ineligibility, beginning on March 7, 2019 from participating or coaching in U.S. Olympic Pan American Games or Paralympic Games Trials, being a member of any U.S. Olympic, Pan American or Paralympic Team and having access to training facilities of the USOC Training Centers or other programs and activities of the USOC including, but not limited to benefits, grants, awards or employment as set for in Section 6 of the USOC NADP.

She further was advised that she faced and USADA was seeking up to a four (4) year prohibition against participation, beginning on March 7, 2019 in any capacity in a competition or activity authorized or organized by any code signatory, Code Signatory's member organization, or a club or other member organization of a code Signatory's member organization, or in competitions authorized or organized by any professional league or any international or national level event organization or any elite or national level sport activity funded by a governmental agency during you ineligibility as described in the IWF Anti-Doping policy and Article 10.12.1 of the code and all other sanctions and consequences which may be required by the Applicable rules including but not limited to , any fines, costs, return of prize money or other financial consequences.

Ms Akuna was also advised of her right to be present for the B sample analysis on March 20, 2019 and for a representative to be present for the opening of the B sample and analysis thereof.

## II. Charges against Ms. Akuna and scheduling issues

By letter dated April 24, 2019, Ms. Akuna was notified via overnight and electronic mail by Ms. Lisa McCumber, USADA Testing Result Manager who advised her that "USADA charges you with an anti-doping rule violation pursuant to Articles 2.1 and 2.2 of the IWF Anti-Doping Policy and Articles 2.1 and 2.1 of the Code. Under the applicable rules doping is strictly forbidden and the use or attempted use of a prohibited substance and/or its presence in a sample provided by you is considered an anti-doping rule violation." Ms. McCumber further advised Ms. Akuna that they are seeking the sanctions and consequences previously stated for her first anti-doping violation.

Ms. Akuna requested an evidentiary hearing on her charges and on May 12, 2019, James Murphy was appointed as sole arbitrator in this matter. On June 4, 2019, a preliminary hearing for scheduling purposes was set to be held telephonically on June 13, 2019. The call was held and included participants,

Douglas Rowsley, appearing on behalf of Ms. Akuna, Jeff Cook and Nadia Sutamona appeared on behalf of USADA and James Murphy appeared as arbitrator.

A scheduling order was issued and signed by the arbitrator on June 17, 2019. The matter was set for an evidentiary hearing to be held September 10, 2019 and included procedural orders with dates of compliance for filing stipulation of uncontested facts, dates for filing briefs, exhibits and witness lists.

Ms. Akuna failed to meet any scheduled deadlines. Notice was sent to her to comply with the scheduling order by August 5, 2019 and she failed to comply with that order.

August 7, 2019, Mr. Jeff Cook requested a teleconference to be arranged to confer among all parties to ascertain the intentions of Ms. Akuna to proceed with further action on this matter.

August 12, 2019, a scheduled teleconference was held including participants James Murphy, Douglas Rowsley on behalf of Ms. Akuna, Jeff Cook, April Osler and Ted Koehler on behalf of USADA.

Mr. Rowsley informed all present that no brief has been prepared, exhibits are gathered but not filed, and that Mr. Rowsley moved the arbitrator to grant leave to Mr. Rowsley to withdraw as counsel for Ms. Akuna.

Mr. Cook, with Mr. Rowsley's approval, requested withdrawal of the existing scheduling order and a telephonic rescheduling order be considered at a telephonic hearing on August 19, 2019.

Mr. Rowsley was ordered to provide all parties the present status of Ms. Akuna's preparations for the evidentiary hearing and a proposed revised scheduling order and further was told that failure to comply with this order will result in consideration of a motion to dismiss this action.

The telephonic hearing of August 19, 2019 included participants James Murphy, arbitrator, Jeff Cook and Ted Koehler on behalf of USADA, Kiara Akuna and her step-father Jon Ferguson, and Douglas Rowsley, counsel for Ms. Akuna.

It was agreed that Ms. Akuna would file all previously ordered documents by August 26, 2019. The evidentiary hearing was reset for October 8 in Orlando, Florida.

Mr. Rowsley's motion for leave to withdraw was, without objection, granted effective August 19, 2019.

On September 6, 2019, a previously scheduled teleconference was held to address the failure of Ms. Akuna or her designated representative, her step-father John Ferguson, to file the previously ordered documents due on August 26, 2019 and ramifications of that failure. Present at this hearing were Jeff Cook and April Oster for USADA and arbitrator James Murphy. Ms. Akuna and her representative John Ferguson failed to appear and preceded the scheduled teleconference with an email sent to AAA who was responsible for scheduling administration for this case. Mr. Ferguson advised AAA that "Kiaras (sic) and I will NOT (emphasis noted) be attending the phone call on the 6th. She has decided to not lift anymore due to the status of this witch hunt. She's going to get crucified for what someone else did to her. Issue your 4 year ban. Thank you, John Ferguson".

It was the decision of the arbitrator that an outright dismissal of the case based on this language fails to assure that due process without further clarification from the minor athlete, Ms. Akuna.

It was determined that the October 8 hearing would proceed as a telephonic hearing at which USADA would provide expert testimony and the basis for suspension of Ms. Akuna as well as an opportunity for her to present admissible evidence. A discovery cut-off deadline was set for September 16, 2019. She was advised that she could secure witness, admissible defense testimony and evidence would be considered.

On September 16, John Ferguson sent an email to Jeff Cook. Therein he stated “the analysis of Kiara’s urine is what it is. I do not doubt raw rwar results as I fully trust the labs without question. What I have a problem with is almost everything else.”

Following that declaration, Mr. Ferguson identified a number of issues including how she was selected for testing and a number of physiological questions about the effects of doping use. He stated that she is being railroaded for something someone else did and crucified for something someone else obviously did not do. He stated that “the test results say yes but EVERYTHING (emphasis noted) else goes with levels this high say “not possible.””

### III. Evidentiary Hearing

On October 8, 2019 the evidentiary hearing was telephonically held. Present were USADA representatives Jeff Cook, Jamie Kline, Ted Koehler, and April Osler. Mr. John Ferguson appeared on behalf of Ms. Akuna. James Murphy served as arbitrator.

USADA provided affidavits from Dr. Matthew Fedoruk, chief science officer at USADA for the past 7 1/2 years. He holds a PhD in Pathology and Laboratory Medicine from the University of British Columbia, Canada.

Dr. Fedoruk swore that USADA’s collection and chain of custody regarding the urine specimen #161271 was appropriate and without error. The UCLA lab, responsible for the testing in this matter, through accepted scientific procedures, in accordance with Standards for Laboratories and without error, analyzed the A and B samples of urines sample 161271 and reported the sample as an adverse finding. The results showed that the resultant inclusions found by testing are non-specific prohibited substances in the class of Anabolic Agents on the WADA prohibited list, adopted by both the protocol and the IWF anti-doping policy.

Dr. Fedoruk also notes that tests indicated a recent administration of methandienone and further that the absence of the detection of DHCMT short-medium metabolites with only the presence of long term metabolite M3 in significant concentration of ingestion of DHCMT in the hours before sample collection.

Dr. Fedoruk commented on testing done by Quest Diagnostic Laboratories on behalf of Ms. Akuna that resulted in findings of negativity due to the absence of anabolic steroids and masking agents. Dr Fedoruk found that it is not possible for Quest to determine what metabolites were analyzed and that assay limits for detection for such anabolic steroids is not reported. Further, it is not possible to conclude from the Quest Lab reports to run a confirmation assay for DHCMT unless they were to obtain certified reference material or pooled excretion time. No representative was present nor did any representative provide any sworn affidavits on behalf of the report offered by Mr. Ferguson.

In response to Mr. Ferguson’s email to Mr. Cook on September 16 dealing with a number of physiological issues that he urges as being contrary to elected results on the body of those who use prohibited substances, Dr. Fedoruk offers an affidavit that scientifically counters such concerns and questions. He states that drugs such as Methendienone and DHCMT could produce “significant negative physical and pollalogical effects, including significant cosmetic and reproductive changes in females. These effects may vary individual to individual and are also dependent on the specific

compound, dose and frequency of AAS ingestion. The severity of adverse effects, or lack thereof, cannot be solely predicted based on (or directly correlated to) the estimated urinary concentrations of prohibited AAS and/or their metabolites in a single sample collection.”

The arbitrator notes that at no time during the preparation for the evidentiary hearing did Ms. Akin comply with any stated schedule deadlines for providing any discovery, brief, agreed stipulation of facts, documentary evidence or affidavits of any kind. While Mr. Ferguson made based assertions of his own observations, he also testified regarding tests by Quest Diagnostic Laboratories and their findings. No submission of any acceptable scientific basis for any such findings presented by Mr. Ferguson justifies reliance on his positions. In spite of that, Dr. Fedoruk has addressed those purported findings and justifies exclusion of the same due to the sound testimony excluding reliance thereon.

Mr. Ferguson’s email of September 16 and his questions posed regarding his observations of Ms. Akuna’s physicality that he deems inconsistent with regular drug use is rebutted by Dr. Fedoruk’s supplemental affidavit in response thereto.

#### Iv. Burden of Proof

USADA bears the burden of proof as found in Article 3 Sec. 3.1 US Anti-Doping Agency Protocol for Olympic and Paralympic Movement Testing:

The Anti-Doping Organization shall have the burden of establishing that an anti-doping violation has occurred. The standard of proof shall be whether the Anti-Doping has established to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation is made. The standard of proof in all cases is greater than the mere balance of probability but less than proof beyond a reasonable doubt.

Ms Akuna has provided no evidence that the prohibited substance found in her A and B samples were unintentionally ingested nor not ingested at all.

USADA has presented evidence to the comfortable satisfaction of the arbitrator bearing in mind the seriousness of the allegation that is made that an anti-doping violation has been established.

Ms. Akuna’s violations do not involve a specified substance. The default penalty is therefore under Article 2.1 and is a 4 year suspension. There is no evidence that the prohibited substances were either not ingested nor ingested unintentionally.

#### V. Penalty and Sanctions

Ms. Akuna has committed an anti-doping violation under the code for the use of a prohibited substance not involving a specified substance therefore she shall serve a period of ineligibility which shall begin March 7, 2019, the date of notice regarding the provisional suspension;

Ms. Akuna’s competitive results from February 16, 2019, the date of her positive test and throughout her period of ineligibility are disqualified and any medals points and prizes earned during that period shall be forfeited;

Ms. Akuna shall serve a four (4) year period of ineligibility from March 7, 2019 from participating or coaching in U.S. Olympic, Pan American Games or Paralympic Games trials, being a member of any U.S. Olympic, Pan American Games or Paralympic Team and having access to the train facilities the USOC

including but not limited to benefits, grants, awards or employment as set forth in Section 6 of the UAOC NSDP;

Ms. Akun shall be required to pay any fines, costs, return of prize money, or other financial consequences that may be required by the IWF rules for violation of its anti-doping policy.

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

It is so Ordered.

November 25, 2019

  
James M. Murphy, Arbitrator