

**INTERNATIONAL WATER SKI
AND
WAKEBOARD FEDERATION**

**Case Decision Regarding
Katelin Wendt**

Decision of Anti-Doping Hearing Panel

Effective August 5, 2017

Hearing Panel
Jeffrey Smith
Noel Dix
Philippa Shedd

Decision

I. Introduction

This matter is before the International Water Ski and Wakeboard Federation's ("IWWF") Anti-Doping Hearing Panel (the "Panel") for decision on an alleged violation by Katelin Wendt of IWWF's Anti-Doping Rules (the "Rules"). At the onset of these proceedings, Ms. Wendt was advised of the nature and potential consequences of the anti-doping rule violation alleged in this case, the procedures that would be followed throughout these proceedings, and of her rights to a fair hearing. Ms. Wendt elected to represent herself in this matter, without counsel. Ms. Wendt was also informed of the persons appointed to serve as the hearing panel, and confirmed that she had no objections to the Panel membership. Philippa Shedd (United Kingdom), Noel Dix (Australia) and Jeffrey Smith (United States) served as the Panel.

A pre-hearing conference was held by telephone conference call on December 4, 2017. As set forth in the minutes of that pre-hearing conference (previously provided to the parties), Ms. Wendt advised the Panel that she did not contest (1) the laboratory report from the Sports Medicine and Testing Laboratory which reported an Adverse Analytical Finding¹ which was positive for "S6-Stimulants/cocaine and its metabolite benzoylecgonine" ("BZE") and (2) the Laboratory's estimated concentration of 980 ng/ML of BZE in her sample. It was agreed that the only contested issue for the final hearing was whether the athlete's positive test results were the inadvertent result of the sharing of drinks, kissing and other intimate contact, such that she had no fault or negligence as defined in Rule 10.4. Ms. Wendt was advised that she had the burden of proof on this issue by a balance of probability, as set forth in Rule 3.1.

¹ Sample code 1598418.

A final hearing was held by telephone conference call on January 10, 2018. Present during the conference call (in addition to the Panel) were Ms. Wendt, and her expert witness, Suzi Cooper, a Nurse Practitioner with clinical experience and education relating to the issues presented in this case. Testifying for IWWF was Daniel Eichner, President of the Sports Medicine Research and Testing Laboratory (which did the laboratory testing in this case), who holds a Ph.D. in medical science with experience and education relating to issues presented in this case. Several other documents were provided and considered by the Panel, including several scientific studies², and statements in support of Ms. Wendt. Case decisions from other “unintentional substance transfer” cases were also provided and reviewed.³ Following the hearing, an additional study⁴ was provided by Dr. Eichner for consideration. Ms. Wendt provided a written response to that study, which was also considered. Ms. Wendt agreed that this matter should be submitted to the Panel for decision following her written response to that study.

For the reasons discussed below, the Panel finds and determines that (1) Ms. Wendt was in violation of Rule 2.1 (Presence of a Prohibited Substance or its Metabolites in an Athlete’s Sample); and (2) Ms. Wendt has not proven that she was without fault or negligence (Rule 10.4) or without significant fault or negligence (Rule 105). Based on the Panel’s findings, Ms. Wendt’s

² Journal of Analytical Toxicology, *Urine Analysis of Laboratory Personnel Preparing Cocaine Training Aids for a Military Working Dog Program*, Vol. 25 (Oct. 2001); www.drugtestingbook.com/cocaine/interpretation-of-results; www.sciencedirect.com/topics/neuroscience/benzoylcegonine.

³ The following decisions were reviewed by the Panel: *International Tennis Federation v. Gasquet* (CAS 2009/A/1930); *United States Anti-Doping Agency v. Roberts* (American Arbitration Association Case No. 01-17-0003-4443); and *Canadian Centre for Ethics in Sport v. Barber* (Sport Dispute Resolution Centre of Canada Case No. SDRCC DT 16-0249).

⁴ Journal of Analytical Toxicology, *Urine Testing for Cocaine Abuse: Metabolic and Excretion Patterns following Different Routes of Administration and Methods for Detection of False-Negative Results*, Vol. 27 (Oct. 2003).

individual and team results from the underlying event are disqualified under Article 10 of the Rules, and a four (4) year period of ineligibility is imposed as required under Rule 10.2.1.

II. Factual Findings

1. Ms. Wendt is a ski racer, and is a member of USA Water Ski. USA Water Ski is the National Governing Body for water ski events, as designated by the U.S. Olympic Committee. Ms. Wendt participated in the “open” division of the 2017 IWWF World Racing Championships (the “Event”), as a member of the U.S. Team. The Event was held in early August 2017.

2. Ms. Wendt participated in four (4) individual competitions within the Event, over a period of several days. The Event was a team competition, although placement medals are also awarded for individual performances. Each national team’s scores are calculated using each athlete’s best 3 (of 4) scores. The U.S. Team, of which Ms. Wendt was a member (and to which her scores contributed), finished in second (2nd) place.

3. The Event was under the jurisdiction of the IWWF, and was subject to IWWF’s Anti-Doping rules. The Rules incorporated the Prohibited List of the world Anti Doping Agency. The 2017 Prohibited List includes Cocaine as a non-specified stimulant, the use of which is prohibited in-competition.

4. In-competition testing occurred at the event, resulting in the collection of a urine sample from Ms. Wendt on August 5, 2017, immediately following the fourth and final test. The test was positive for the presence of “S6-Stimulants/cocaine and its metabolite benzoylecgonine.”⁵ The test lab subsequently estimated the BZE concentration in the sample at 980 ng/mL. These results were undisputed, and have been accepted as such by the Panel. This evidence is sufficient under Article 3 of the Rules to establish a violation under Rule 2.1.

⁵ Ms. Wendt waived her right to have the B Sample analyzed.

5. The athlete was notified of the positive test results, and of this claim under the Rules, on September 28, 2017.

6. In defense of the charges in this case, Ms. Wendt argued that she was without fault or negligence under the circumstances leading up to this positive test result, such that no period of ineligibility should be imposed (Rule 10.4). Although not argued by Ms. Wendt, the Panel has also considered whether the evidence demonstrated that she was had no significant fault or negligence in this case, such that the period of ineligibility should be reduced (Rule 10.5).

7. As the basis for her defense, Ms. Wendt testified that she attended a hotel room party (after the third race of the Event) the night before the final (fourth) race of the Event. She was at the party for several hours, beginning at about 5 PM, with the party ending around 2 or 3 AM the next morning (the day of the fourth race, which was the day she was tested). Although she drank alcohol, her consumption was moderated because she was aware that she would be breath-tested before the fourth race. She was also aware that she might be drug tested after the fourth race, as she had been tested on several prior occasions at earlier world championship events. She had also previously been selected for testing as a part of the U.S. Anti-Doping Agency's Registered Test Pool. She was thus aware of the possibility, and perhaps the likelihood, that she would be drug tested at the Event.

8. Ms. Wendt testified that drugs, specifically cocaine, were being used at the party, although Ms. Wendt testified that she did not use any cocaine. The use of cocaine by other party attendees was out in the open, and was being ingested both intranasally and orally. Ms. Wendt was aware that cocaine was being used by others at the party. During the party, Ms. Wendt shared drinks with others, and engaged in kissing and intimate contact with one of the cocaine users. Ms. Wendt testified that she was not aware that cocaine could be indirectly ingested by kissing or other

contact with a cocaine user, and she was thus unaware that her activities could potentially result in a failed drug test.

9. Ms. Wendt participated in the fourth race of the Event later that day, after which she was drug tested. That test resulted in the positive finding for BZE.

10. Ms. Wendt testified that she did not use cocaine in connection with the Event, and that she does not believe this substance would enhance athlete performance given the nature of the Event.

11. Although Ms. Wendt did not receive an individual medal at the Event, the U.S. Team received the silver medal.

12. Ms. Wendt's expert, Suzy Cooper, testified that several studies have demonstrated the possibility of "passive" transfers of cocaine (from a user to a non-user), such that the recipient would have positive test results at low levels. She believes that the concentration estimated in this case (980 ng/mL) is a low, "trace" amount, and not consistent with the intentional use and ingestion of cocaine. Based on her clinical experience, the estimated concentration was consistent with a passive transfer of cocaine, such as Ms. Wendt testified may have occurred (sharing drinks, kissing, etc.).

13. IWWF's expert, Dr. Eichner, agreed that passive transfers of cocaine can occur. However, based on his training and experience, it was his opinion that the estimated concentration in this case was high. Specifically, it was his opinion that the estimated concentration was much higher than would result from the passive transfer of cocaine. Dr. Eichner also testified that post-ingestion levels of cocaine and its metabolites are very dependent on the method of ingestion. However, he noted that passive transfer cases typically involve concentrations in the 50 ng/mL

range, i.e., much lower than the 980 ng/mL estimate in this case. It was thus his opinion that the estimated concentration was not consistent with Ms. Wendt's passive transfer claim.

III. Discussion and Application of the Rules

It is undisputed that there was an Adverse Analytical Finding in this case, and thus a violation of the Rules. On the whole, the Panel found Dr. Eichner's testimony to be entitled to greater weight than Ms. Cooper's, based on their respective credentials and training, their experience with drug testing in circumstances such as (or similar to) those present in this case, the scientific studies that were submitted by the parties for consideration, and their respective analyses in this case. Irrespective of that debate – whether the estimated concentration was indicative of something more than passive ingestion – the circumstances do not support Ms. Wendt's defenses.

As set forth in the Rules, "It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body." Rule 2.1.1. Although the rules are not intended to punish innocent athletes, the open use of cocaine at the party under the circumstances present in this case, in the presence of and known to Ms. Wendt, is inconsistent with a claim that she was without fault or negligence, or that she was without significant fault or negligence, in this case. The Panel therefore finds that Ms. Wendt has not proven her defense under either Rule 10.4 or Rule 10.5. Given the circumstances, the Panel also finds that Ms. Wendt's results should be disqualified from the Event under Rule 10.1.

The Panel also considered whether the athlete was eligible for a reduced period of ineligibility under rule 10.2.1.1 ("The period of ineligibility shall be four years where "the anti-doping rule violation does not involve a Specified Substance, unless the Athlete can establish that the anti-doping rule violation was not intentional"). The conduct in this case is inconsistent with a claim that the violation was not intentional. See rule 10.2.3 (the term "intentional" includes

circumstances where the Athlete engaged in conduct such that she “knew that there was a significant risk that the conduct might constitute or result in an anti-doping violation and manifestly disregarded that risk”).

In summary, the Panel finds and determines that a violation of Rule 2.1 (Presence of a Prohibited substance or its Metabolites in an Athlete’s Sample) has been proven in this case.

III. Consequences

Based on these findings, the following consequences are imposed in this case:

1. Ms. Wendt is disqualified from the Event, and her results obtained in the Event (including each race during the event) should be forfeited, per Rule 10.

2. IWWF shall advise the Chief Calculator and Event organizer of this disqualification, with instructions that the results from the Event, including the calculation of team placements and scores, shall be recalculated to reflect Ms. Wendt’s disqualification.

3. Ms. Wendt is ineligible to participate in any capacity in a competition, event or other activity (other than authorized anti-doping education or rehabilitation programs) organized, convened or authorized by IWWF, or any of its regional or national federations (or any club or other body that is a member or affiliate of IWWF, or its regional or national federations), or any other signatory to the World Anti-Doping Code, from August 5, 2017 until August 4, 2021 (4 years), as mandated by Rule 20.2.1.

Article 13 of the Rules gives a right of appeal to Ms. Wendt, IWWF and other parties, as set forth in the Rules. Any appeal would be to the Court of Arbitration for Sport (rule 13.2.1). Any appeal must be filed within twenty-one days from the date of issuance of this decision in accordance with the Rules, as well as the procedures of the Court of Arbitration for Sport.

Unless and until this decision is vacated, modified or suspended on appeal, then under Rule 13.1 this decision and the period of ineligibility imposed by this decision will remain in effect.

Issued this 14th day of January 2018.

IWWF Hearing Panel

Jeffrey Smith
Noel Dix
Philippa Shedd

cc: IWWF
USA Water Ski
WADA