

**INTERNATIONAL WATERSKI
AND
WAKEBOARD FEDERATION**

**Case Decision Regarding
Carolina Rodriguez Davila**

Decision of Anti-Doping hearing Panel

October 16, 2018

Hearing Panel
Jeffrey Smith
Philippa Shedd
Silvia Terracciano

Decision

I. Introduction

This matter is before the international Waterski and Wakeboard Federation's ("IWWF") Anti-Doping Hearing Panel (the "Panel") for decision on an alleged violation by Carolina Rodriguez Davila of IWWF's Anti-Doping Rules (the "Rules"). At the onset of these proceedings, Ms. Rodriguez 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. Rodriguez retained counsel to represent her in these proceedings. Ms. Rodriguez was also informed of the persons to serve as the Panel, and raised to objections to the Panel Membership. Ms. Rodriguez raised no objections to the procedures followed by the Panel in these proceedings.

The final decision of the Panel is set forth below.

II. The Allegations and Pre-Hearing Procedures

Ms. Rodriguez was a wakeboard athlete representing the Mexican federation at the 2017 Latin American and Pan American Wakeboard Championships (the "Event"), which was held from 10 to 15 October 2017 in Bogota, Columbia. Ms. Rodriguez was selected for an in-competition test (which occurred on 14 October 2017), and tested positive for stanozolol. Stanozolol is a synthetic steroid which was on the World Anti-Doping Agency's 2017 Prohibited List as a Class S1 non-specified substance (an anabolic agent).

As a result of this positive test, Ms. Rodriguez was notified by IWWF that she was being charged with a violation of the Rules, specifically Article 2.1 ("Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample"). There was, however, considerable confusion as to which federation had jurisdiction over this matter. Ultimately, it was determined

that IWWF had jurisdiction, and the first notice of the alleged Anti-Doping Rules Violation was sent to Ms. Rodriguez on 15 March 2018. A provisional suspension was ordered shortly after the first notice of the alleged violation was given to Ms. Rodriguez (see Rule 7.9.1).

In her initial response to the positive test results, Ms. Rodriguez accepted responsibility for the violation, but indicated she took the substance unknowingly. As a part of Ms. Rodriguez' initial response, she attached a statement from her athletic trainer who indicated that a non-prescription medicine or product (estanozolol) had been recommended to Ms. Rodriguez (reportedly after a year "full of heavy injuries") "so that she could return to her ideal weight, decrease injuries, and return to training as soon as possible." Ms. Rodriguez stated that the goal in taking the product was to help her regenerate her tissue from injuries to her knees, and to help her gain weight while maintaining a healthy diet. It is undisputed that Ms. Rodriguez did not take any steps to determine whether the product she was using included any ingredients or substances which were on WADA's Prohibited List.

Based on this initial response, Ms. Rodriguez was asked how she wished to proceed in this matter, i.e., an admission that a Rules violation had occurred, a contested hearing, etc. In the meantime, a hearing date was scheduled. However, Ms. Rodriguez retained counsel to represent her in this matter, and (at the request of her counsel), the hearing in this matter was adjourned to allow Ms. Rodriguez and her counsel an opportunity to review the allegations in this case and to prepare her defense.

A status conference was then set for 21 June 2018 to discuss the issues that Ms. Rodriguez and her counsel wished to dispute and to discuss the overall status of the case. In connection with this status conference, Ms. Rodriguez' counsel advised the Panel that certain matters relating to the alleged Rules were at issue, including questions regarding the sample collection procedures

and whether the testing of her samples was done correctly. Consequently, an opportunity was provided for the parties to continue their investigation of the matters at issue, and to prepare for a contested hearing.

A contested hearing was then scheduled for 20 September (to address issues of the alleged violation), with a second hearing scheduled for 27 September (to address issues of sanctions, if a Rules violation was found to have occurred). Prior to the first hearing, Ms. Rodriguez (by counsel) advised the Panel that she was withdrawing her request for a hearing, and she was no longer contesting that a Rules violation had occurred, as originally alleged. See Rule 7.10.2. Ms. Rodriguez (again, by counsel) then provided the Panel with a written submission regarding the issue of sanctions.

This matter is thus ready for a final decision.

III. Analysis

A. The Anti-Doping Rules Violation

Ms. Rodriguez was charged with a violation of Rule 2.1 (“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample”). The evidence supports this allegation, and Mr. Rodriguez does not contest it. Thus, the Panel finds that IWWF has sustained its burden of proof on this issue (see Rule 3.1), and finds that a violation of Rule 2.1 occurred in this case.

B. Sanctions

1. Results from the Event.

As a result of this decision, all individual and team scores and results for Ms. Rodriguez in connection with the Event are disqualified. See Rules Article 9 and 10.1. IWWF should notify the

officials and local organizing committee of this disqualification, so that the individual and team scores from the Event may be corrected.

2. Period of Ineligibility.

The next question is whether a period of ineligibility should be imposed as a result of this decision. The Panel finds that a period of ineligibility is required in this case, as discussed below.

Under Rule 10.2, a four year period of ineligibility must be imposed if the violation does not involve a Specified Substance,¹ unless the violation was not intentional. See Rule 10.2.1.1. “Intentional” violations are defined in Rule 10.2.3, and this category of violators is intended to include those “athletes who cheat.” Thus, the question is whether Ms. Rodriguez’ violation was, or was not, “intentional.”

In considering this issue, the Panel has carefully considered the record as a whole, including the athlete’s submission (Serna letter dated 27 September 2018) indicating that she was not aware that the product recommended by her trainer included a prohibited substance, that she did not intend to cheat or gain any competitive advantage, and that her reason for taking the product was because of pain in her knees and to counter her loss of weight. Based on this review, the Panel has determined that the violation was not intentional as defined in Rule 10.2.3. Consequently, the Panel determines that the presumptive period of ineligibility is two (2) years under Rule 10.2.2.

Ms. Rodriguez has asked that the Panel consider a further reduction in the period of ineligibility under Rule 10.5.2 (“Reduction of the Period of Ineligibility Based on No Significant Fault or Negligence”). On this issue, the athlete has the burden of proof. See Rule 3.1. The Panel’s review of the record as a whole, as generally discussed above, is applicable to this analysis as well.

¹ As noted above, this case does not involve a Specified Substance.

It is well established that an athlete bears a personal duty of care in ensuring compliance with anti-doping obligations. That being said, the Rules anticipate that it may sometimes be appropriate to reduce the sanctions imposed by an athlete if the athlete's degree of fault is not significant. See Rule 10.5.2. "No fault or negligence" is defined in Appendix 1 to the Rules as follows:

The Athlete or other Person's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for no fault or negligence, was not significant in relationship to the anti-doping rule or violation.

In assessing an athlete's degree of fault, the circumstances considered must be specific and relevant to explain the athlete's departure from the expected standard of behavior. See Definition of "Fault" in Appendix 1 to the Rules. In general, relevant considerations include the degree of risk that should have been perceived by the athlete under the circumstances, and the level of care and investigation exercised by the athlete in relationship to what should have been the perceived level of risk. Thus, specific factors to be considered include such things as whether the athlete reviewed the label of the product to determine its ingredients, cross-checked or otherwise investigated those ingredients, or took any other steps to determine if the product contained any prohibited substances.

In this case, Ms. Rodriguez accepted the recommendation of her trainer that she take estanozolol to assist in her recovery. There is no evidence that she undertook any due diligence or investigation to determine its ingredients, or to avoid the possibility of a Rules violation. Notably, even a quick internet search would have quickly disclosed that this product included a substance which was on WADA's 2017 Prohibited List.

Under the circumstances, the Panel finds that Ms. Rodriguez acted with a significant degree of fault, and that she has not sustained her burden of establishing that the period of ineligibility

should be further reduced in this case under Rule 5.2.2. Thus, a period of ineligibility of twenty four (24) months is appropriate in this case.

3. Commencement of Ineligibility Period

Although the period of ineligibility normally starts on the date of the final hearing decision (with credit for any interim suspension), there was a substantial delay in the commencement of this proceeding because of the initial uncertainty as to which federation had jurisdiction in this case. Under the circumstances of this case, the Panel finds that the period of ineligibility should commence on the date of the sample collection, i.e., 14 October 2017. See Rule 10.11.1.

IV. Decision and Consequences

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

1. Ms. Rodriguez is disqualified from the Event, and her individual and team results obtained in the event are forfeited;
2. IWWF should advise the Event officials and organizer of this disqualification, with instructions that the results of the Event, including the calculation of individual and team placements and scores, shall be recalculated to reflect Ms. Rodriguez' disqualification.
3. Ms. Rodriguez 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 14 October 2017 to 13 October 2019 (twenty four months). Ms. Rodriguez should also carefully review the Rules before participating in any non-sanctioned (by

IWWF) competition or event to determine if any such participation may be a further violation of the Rules.

Article 13 of the Rules gives a right of appeal to Ms. Rodriguez, 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 (21) 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 16th day of October 2018.

IWWF Hearing Panel

Jeffrey Smith
Philippa Shedd
Silvia Terracciano

cc: IWWF
Mexican Waterski & Wakeboard Federation
WADA