



FIVB

Disciplinary Panel

Decision

In the matter of

Ms.

(China)

21 August 2017

THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2
of the FIVB Medical and Anti-Doping Regulations 2016
and composed by

Ms. Sabinah Clement, Chair	(British Virgin Islands) Disciplinary Panel Chair
Ms. Margaret Ann Fleming	(Scotland) Disciplinary Panel Vice-Chair
Dr. Annie Peytavin	(France) Medical Commission President

at the hearing which took place via telephone conference
on 6 June 2017, 3 pm Swiss Time, heard the case identified as n. 6162945:

FACTUAL BACKGROUND

1. On 9 May 2017, the FIVB was notified by the WADA-accredited Laboratory in Bangkok, Thailand ("Laboratory") regarding an Adverse Analytical Finding for the A-sample 6162945, which contained the prohibited substance S6 Stimulants/sibutramine metabolites bis-desmethyisibutramine, desmethyisibutramine ("Sibutramine Metabolites").
2. The abovementioned urine sample was taken in-competition on 13 March 2017 in Chong Qing, China during the 2017 AVC Asian Girls U18 Volleyball Championships ("Event") and belongs to the athlete Ms. (China, born "Athlete").
3. After having received notification from the Laboratory, the FIVB contacted the Chinese Volleyball Association ("CVA") on 18 May 2017 to inform the Athlete of the adverse analytical finding and that she had the right to request the analysis of the B-sample and to attend the opening thereof.
4. On 23 May 2017, the CVA responded to the letter submitting in essence the following:
 - The Athlete had a medical condition that required her to take medication, which she failed to disclose on the Doping Control Form due to the fact that she was nervous;

- The Athlete did not wish to proceed with the analysis of the B-sample; and
 - CVA requested to be informed as to when the hearing would occur and provided a preliminary list of attendees at the hearing.
5. By email on the same day, the FIVB:
 - acknowledged receipt of CVA's email;
 - noted that the Athlete waived her right to request the analysis of the B-Sample; and
 - informed CVA that the hearing date would be transmitted shortly.
 6. On 27 May 2017, the CVA sent additional information regarding the Athlete's medical condition as well as documentation regarding the three medications that she was taking for said medical condition.
 7. On 29 May 2017, the FIVB acknowledged receipt of the abovementioned documentation and informed the CVA that it would forward this documentation to the FIVB Disciplinary Panel.
 8. By letter dated 29 May 2017, the FIVB informed the Athlete that the B sample analysis was waived based on the communication received on 23 May 2017, requested that the Athlete inform the FIVB as to whether she wanted an in person hearing or a teleconference hearing on 6 June 2017 at 3 PM (Swiss time) and requested any further documentation that she would like to submit regarding her position.
 9. On 31 May 2017, the Athlete confirmed that she would like a hearing by teleconference on 6 June 2017 at 3 PM (Swiss time). She also requested the following participants with her at the hearing:
 - The Athlete's parents;
 - The Athlete's family doctor;
 - The Athlete's coach;
 - The Deputy Director of Henan Volleyball Administrative Center;
 - Director of the Department of Competitive Sport of Henan Sports Bureau;
 - The Vice President of the CVA;
 - Two Members of the Youth and Junior Committee of the CVA and

- A Staff member from the Foreign Affairs Department of the CVA.
10. On 6 June 2017, the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB Legal Advisor Dr. Heiner Kahlert and the FIVB Legal Affairs Manager Mr. Stephen Bock, the Athlete, and the abovementioned participants.
11. During the hearing, the Athlete reiterated that she had a permanent medical condition that had affected her since January 2008. To treat this condition, she could either 1) take medication to treat the issue conservative or 2) have surgery. Her family chose the conservation treatment, and she only took the medication suggested by her doctor. Thus, she was shocked when she tested positive for Sibutramine metabolites. Subsequently, the members of the FIVB Disciplinary Panel, the FIVB Legal Affairs Manager and the FIVB Legal Advisor asked the Athlete some questions, which revealed the following information:
- The FIVB Disciplinary Panel first noted that sibutramine and its metabolites are usually used to reduce weight and, in fact, one side effect of sibutramine was the very condition that the Athlete was trying to combat. The Athlete confirmed that she did not experience any sudden weight loss nor did she want to lose weight. The Athlete stated that she was 1.93 metres tall and 83 kilograms in weight.
 - The Athlete stated that the doctor from the hospital who made the original diagnosis recommended three supplements to combat the Athlete’s medical condition: Kokando Beauluck A, By-Health Colon Cleanse and Shinya Koso Night Diet. She took the Kokando Beauluck A mainly and only took the other two if she ran out of the Kokando Beauluck A. The medication recommended was very effective in treating her condition, and she stated that she only declared the Kokando Beauluck A on her Doping Control Form. She did not inform the coach of her national team that she was using these medications but did inform the coach of her club team.

- The Athlete confirmed that she took the medication daily at night since 2014. She also confirmed that she took the Kokando Beauluck A during the competition and last took the By-Health Colon Cleanse on 25 February 2017 and the Shinya Koso Night Diet on 5 March 2017.
- Regarding research, the Athlete stated that she researched both the Kokando Beauluck A and the By-Health Colon Cleanse but did not research the Shinya Koso Night Diet because the label was in Japanese, a language that she could not read. Her research revealed that the Kokando Beauluck A and the By-Health Colon Cleanse did not contain a prohibited substance. She checked the ingredients against a brochure provided to her by a sports medical hospital, which listed all prohibited substances.
- Regarding anti-doping education, the Athlete stated that she had a lot of anti-doping education through her club. She also stated that the CVA organised an anti-doping education course on 25 February 2017 after the team assembled before the Event. Additionally, the Athlete confirmed that she had been made aware that athletes should read the ingredients carefully and look at any descriptions of the product; otherwise, they would get punished if there was a prohibited substance in the product.
- Regarding experience, the Event was the Athlete's first international competition and was her first time going through doping control. She confirmed that she had never gone through doping control with her club.
- Regarding applying for a Therapeutic Use Exemption, the Athlete said that she did not apply for one because she did not think that any of the medications contained a prohibited substance and she claimed that she was not familiar with the Therapeutic Use Exemption procedure.

12. The Athlete concluded the hearing by reading a statement that she had prepared for the FIVB Disciplinary Panel. In her statement, the Athlete:

- apologized for the situation and stated that she would strengthen her knowledge on anti-doping;

- will stop taking the medications, consider changing medications and ask the team doctor before taking any medications;
 - stated that she would consider having surgery to alleviate her condition as she is still only
 - emphasised that she still wants to play and has great enthusiasm for volleyball; and
 - declared that she did not take these medications to enhance her sporting performance but rather just to treat her medical condition.
13. On 26 June 2017, the FIVB sent the label of the Shinya Koso Night Diet medication to the Japanese Anti-Doping Agency (“JADA”) and requested information about the composition of the medication.
14. On 30 June 2017, JADA informed the FIVB that there were no prohibited substances in the Shinya Koso Night Diet but that it was difficult to make an accurate judgment because the medication contained herbal medicines and digestive enzymes.
15. On 7 July 2017, JADA sent a full translated list of ingredients for the Shinya Koso Night Diet and confirmed that the medication probably did not contain a prohibited substance but, because some of the ingredients were natural, it could not be judged “unconditionally”.

LEGAL CONSIDERATIONS

16. According to the WADA 2017 Prohibited List, the substance Sibutramine and its metabolites are included in the category S.6 (Stimulants) and is prohibited in-competition.
17. According to Article 2.1 of the FIVB Medical & Anti-Doping Regulations 2016 (“FIVB MADR”), the presence of a prohibited substance in an athlete’s bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB MADR.
18. The abovementioned sample (Nr. 6162945) belongs to the Athlete.
19. No Therapeutic Use Exemption exists in this case, as per Article 4.4 of the FIVB MADR.

20. The Athlete has not contested that an anti-doping rule violation has occurred. Rather, she seeks to have her sanction reduced because she claims her anti-doping rule violation was not intentional. The Panel notes that the Athlete tested positive for Sibutramine Metabolites, which is considered a Category S6 substance.
21. According to Article 4.2.2 of the FIVB MADR, all prohibited substances are deemed specified substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Category S6 is the category for stimulants, which are not identified as non-specified and, consequently, the prohibited substance in the case at hand (Sibutramine Metabolites) is considered a Specified Substance.
22. The FIVB Disciplinary Panel notes that the period of ineligibility for a violation of Article 2.1 FIVB MADR concerning a specified substance shall be as follows:
- four (4) years when the anti-doping rule violation involves a Specified Substance, unless the FIVB can establish that the anti-doping rule violation was intentional (Article 10.2.1.2 FIVB MADR);
 - two (2) years if the FIVB cannot establish that the anti-doping violation was intentional (Article 10.2.2 FIVB MADR).
23. Additionally, Article 10.2.3 FIVB MADR defines the term “intentional” as follows:
- “As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she 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.” (emphasis added)

24. The FIVB MADR further provides for a potential reduction for an anti-doping rule violation involving a Specified Substance in Article 10.5.1.1 as follows:

“Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.”

25. Under the FIVB MADR, “No Significant Fault or Negligence” is defined 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 of No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.” (emphasis added)

26. With this framework in mind, the FIVB Disciplinary Panel will first examine whether or not the anti-rule violation was intentional in order to determine whether a four year or two-year standard sanction should be apply to the present case.

27. The Athlete contends that she did not take sibutramine intentionally. Instead, in her view, the only explanation is that the prohibited substance was contained in the three supplements she was taking for a medical condition around the time that she was tested. According to the Athlete’s testimony, the By-Health Colon Cleanse was taken 16 days before the urine sample collection, the Shinya Koso Night Diet was taken 8 days before the urine sample collection and the Kokando Beauluck A was taken the night before the urine sample collection.

28. The Panel notes that the FIVB has not asserted any evidence contradicting that she ingested sibutramine unintentionally. Moreover, but for the Kokando Beauluck A, the other medications were taken out-of-competition and, thus, the Athlete would be subject to a rebuttable presumption regarding intent if the prohibited substance was contained in the medications other than the Kokando Beauluck A.

Consequently, the Panel finds that the FIVB has not met its burden of proving that the anti-doping rule violation was intentional. Thus, the standard sanction for this case is two years based on the Athlete's unintentional anti-doping rule violation.

29. The Panel now must examine whether the Athlete is entitled to a further reduction from two years for an unintentional anti-doping rule violation because the facts and circumstances of this case demonstrate that the Athlete committed No Significant Fault or Negligence.
30. The Panel notes that because the Athlete is a minor, she does not bear the burden of proving how the prohibited substance entered her body (*see* the definition of "no fault or negligence" and "no significant fault or negligence"). However, the Athlete did in fact submit that she suspects having ingested sibutramine through the medications she took.
31. After the hearing, the Panel was concerned that the Shinya Koso Night Diet may have been responsible for the adverse analytical finding in that 1) it is a dietary supplement (as opposed to a medication designed to treat the Athlete's medical condition) and it is not unusual for sibutramine to be found in dietary supplements and 2) while the Athlete was able to check the label of the other two supplements, she was not able to confirm the contents of the Shinya Koso Night Diet because the label was in Japanese. Additionally, the FIVB confirmed that the contents of the labels of the other two medications, which did not list any prohibited substances.
32. Based on this information, the Panel sent the label of Shinya Koso Night Diet to the JADA to review the contents of the label and provide any relevant information regarding this supplement. JADA's response confirmed that there was probably not a prohibited substance in the Shinya Koso Night Diet based on the label but noted that some of the ingredients were natural ingredients that could not be judged unconditionally.
33. The Panel finds that it was sufficiently convinced by the Athlete's testimony that she did not take any additional supplements or medications than the ones that she took to treat her medical condition. Based on the testimony, the Panel does not find sufficient evidence demonstrating that the Athlete may have been taking a substance with Sibutramine in order to lose weight. At 17 years old with a height of

1.93 metres, a weight of 83 kilograms is in line with a healthy weight for her height. Therefore, on a balance of probabilities, the Panel finds that the likely cause of her anti-doping rule violation was one of the three medications she was taking for her medical condition. Therefore, this is the basis for the required determination whether the Athlete bore (significant) fault or negligence.

34. Taking into account the totality of the circumstances (detailed below), the Panel finds that Athlete's anti-doping rule violation was committed with No Significant Fault or Negligence. Thus, Article 10.5.1.1 of the FIVB MADR is applicable to the present case, and the Athlete is entitled to a further reduction of her sanction.
35. Based on the above determination, the FIVB Disciplinary Panel must now determine what the sanction should be. As described in Article 10.5.1.1 FIVB MADR, the sanction for an anti-doping rule violation can range from a reprimand with no period of ineligibility and a two (2) year period of ineligibility based on the Athlete's degree of fault.
36. In looking at the Athlete's degree of fault, the FIVB Disciplinary Panel must examine the actions taken by the Athlete. Previous FIVB jurisprudence states that the FIVB Disciplinary Panel should focus on circumstances that influence an Athlete's duty of care, such as the level of the Athlete, age of the Athlete, anti-doping education, organized versus unorganized volleyball environment, whether or not the Athlete researched the product, etc. when looking at an Athlete's degree of fault for purposes of a reduction of sanction (*see* FIVB Disciplinary Panel Decision In the matter of Ms. Lucia Paz LOZANO LORENZINI, para. 19)
37. Regarding this duty of care, the Court of Arbitration for Sport has noted the following:

"Nevertheless, the Panel considers that the arguments exposed by the Appellant to require the reduction of the period of ineligibility must be analysed in the light of the normative standard of "duty of care" which is claimable of all athletes regarding substances that they freely decide to ingest. In this regard, as one of the main principles in the context of anti-doping control in sport, it is abundantly clear that all athletes must be extremely careful with the food contents, fluids, and in general, with any products that she or she may ingest, either for nutrition

or therapeutic purposes, as they may contain some substance identified on the WADA Prohibited List. As has been expressly established by CAS jurisprudence: "In each case, the Athlete's fault is measured against the fundamental duty which she or she owes under the Program and the WADC to do everything in her or her power to avoid ingesting a Prohibited Substance. (CAS 2011/A/2518)" (CAS 2013/A/3431, para. 59).

38. Examining these circumstances in the present case, the FIVB first notes that the Athlete is a minor who is just starting her professional career. This was her first international competition and her first time going through doping control. Additionally, during the hearing, the Athlete stated that she had "a lot" of anti-doping education from her club and had participated in one anti-doping course organised by the CVA before the Event. Based on this information, the FIVB finds that the Athlete was inexperienced overall but had been educated about doping without any practical experience of going through doping control. The Athlete also stated that she was aware of her duty of care, i.e. that she was responsible for the substances that she put in her body and would be subject to sanction if she committed an anti-doping rule violation.
39. The Panel also notes that she was taking three substances recommended by her doctor to treat her medical condition. It appears that the label for these products did not reveal that it contained Sibutramine or its metabolites. Thus, the Athlete would not have suspected that she needed a Therapeutic Use Exemption. Moreover, she did not declare the Shinya Koso Night Diet or the By-Health Colon Cleanse on the Doping Control Form. Yet, the Panel finds that this lack of declaration on the Doping Control cannot be held against her because the Doping Control Form requested the Athlete to "[l]ist any prescription/non-prescription medications or supplements, including vitamins and minerals, taken over the past 7 days (including dosage where possible) if necessary continue on a supplementary report form" (emphasis added). As both the Shinya Koso Night Diet and the By-Health Colon Cleanse were taken more than seven days before the sample collection, the Panel finds that the language of the Doping Control Form mitigates the Athlete's failure to disclose these substances on the Doping Control Form.

40. However, it is unclear whether the Shinya Koso Night Diet was a proper substitute for the Kokando Beauluck A given that its name implies that it could be used for weight loss instead of the treating the Athlete's medical condition. Additionally, the Athlete stated that the only research that she conducted was related to the Kokando Beauluck A and the By-Health Colon Cleanse because she could not read the label of the Shinya Koso Night Diet. The Athlete still decided to take the Shinya Koso Night Diet even though she did not know what it contained and could not read the label. This decision to ingest the Shinya Koso Night Diet runs completely counter to the fundamental duty that an Athlete has to be extremely careful about what enters her body.
41. The FIVB Disciplinary Panel finds that the Athlete did not meet the required duty of care expected of Athlete's within the sport of Volleyball. The FIVB Disciplinary Panel expects volleyball athletes to at least conduct a preliminary internet search before consuming a product or contact a competent anti-doping authority. Unfortunately for the Athlete, she did not consult with any anti-doping professionals or authorities prior to consuming the Shinya Koso Night Diet.
42. That being said, the FIVB Disciplinary Panel notes that the Athlete might not have found any information showing that the Shinya Koso Night Diet or the other two medications that she consumed contained a prohibited substance had she conducted an internet search. In fact, the FIVB Disciplinary Panel did conduct an internet research of its own and did not find any such information. Furthermore, the label of the medications did not contain any indication of a prohibited substance. Additionally, the Panel notes that JADA could not say with certainty that these medications did not contain a prohibited substance given that the ingredients were natural and, although not proven in the present case, could have been contaminated. Internet research would also have revealed that other Japanese weight loss products have been found to contain sibutramine (<http://www.nydailynews.com/life-style/health/fda-warns-japanese-weight-loss-pills-product-suspected-cancer-causing-agent-article-1.1056705>). These factors also affect the Athlete's duty of care and degree of fault.

43. Balancing these various factors which determine the Athlete's degree of fault, the FIVB Disciplinary Panel holds that the period of ineligibility shall be ten (10) months in accordance with the range of sanctions provided for in Article 10.5.1.1 FIVB MADR.
44. Regarding the start date of the sanction, the Panel notes that this process has been delayed for two months from the date of sample collection until the FIVB was informed of the adverse analytical finding and, for two and a half months, between the hearing and the decision while it requested a review the label of the Shinya Koso Night Diet from JADA. Consequently, the Panel finds that period of ineligibility shall start on the date of the hearing. All competitive results achieved by the Athlete alone from the period of 13 March 2017 until the date of her last competition shall be disqualified.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Ms. [redacted] (China) has committed an anti-doping rule violation (presence of the prohibited substance S6 Stimulants/ sibutramine metabolites bis-desmethyisibutramine, desmethyisibutramine in her bodily specimen) according to Article 2.1 of the FIVB MADR.
2. A sanction of ten (10) months of ineligibility shall be imposed on the athlete Ms. [redacted], according to Article 10.5.1.1 FIVB MADR.
3. The period of ineligibility shall start on 6 June 2017 and end on 5 April 2018, as per Article 10.11 FIVB MADR.
4. All competitive results achieved by the athlete Ms. [redacted] alone between 13 March 2017 and the date of her last competition shall be disqualified as per Article 10.11.1.
5. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 21 August 2017

For the FIVB DISCIPLINARY PANEL



Ms. Sabinah Clement.

Chair

NOTICE OF APPEALS
(doping cases)

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical and Anti-Doping Regulations 2017 (FIVB MADR) and with the provisions of the Code of Sports-Related Arbitration (see www.tas-cas.org).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 14.7 of the FIVB MADR: "Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation."

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

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