

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF BRITISH WEIGHT LIFTING**

Before:

Matthew Lohn (Chair)

Dr Terry Crystal

Dr Barry O'Driscoll

BETWEEN:

UK Anti-Doping

National Anti-Doping Organisation

-and-

Adam Fedorciow

Respondent

**DECISION OF THE ANTI-DOPING
TRIBUNAL**

INTRODUCTION

1. This is the decision of the Anti-Doping Tribunal ("the Tribunal") convened¹ to determine a charge brought against Mr Adam Fedorciow ("Mr Fedorciow").
2. A hearing was convened in London on 16 January 2018 to determine a charge arising from the alleged commission of an Anti-Doping Rule Violation ("ADRV") in breach of Article 2.1² of the Anti-Doping Rules ("ADR"). The allegation was that higenamine and coclaurine, a metabolite of higenamine, were present in a urine sample provided by Mr Fedorciow on 15 July 2017. Higenamine is a beta-2 agonist which is categorised as a Prohibited Substance under class S3 of the World Anti-Doping Code 2017 Prohibited List (the "2017 List").
3. At the hearing, Mr Fedorciow was present and represented by Max Shephard, of Counsel. UK Anti-Doping Limited ("UKAD") was represented by Paul Renteurs, of Counsel.
4. This document is the reasoned decision of the Tribunal, reached after consideration of the written evidence and submissions made by the parties attending at the hearing. We indicate below our findings of fact, reasoning and conclusions.

FACTUAL BACKGROUND

5. Mr Fedorciow is a 27 year old weightlifter and has been a licensed competitor of British Weight Lifting ("BWL") since 2012, during which time he has competed in both local and national competitions. He has previously competed as a rugby player at junior international level.
6. On 15 July 2017, a Doping Control Officer attended the British Weight Lifting Championships (the "Championships"), held at the Ricoh Arena in Coventry, to collect an In-Competition urine sample. Mr Fedorciow provided a urine sample

¹ Under Article 5.1 of the *2015 Procedural Rules of the National Anti-Doping Panel* ("the Procedural Rules") and Article 8.1 of the *UK Anti-Doping Rules* dated 1 January 2015 ("ADR") adopted by British Weight Lifting ("BWL").

² Titled "Presence of a Prohibited Substance in an Athlete's urine sample".

which was split into two separate bottles. These were given reference numbers A1136846 ("the A Sample") and B1136846 ("the B Sample").

7. Both samples were transported to the World Anti-Doping Agency ("WADA") accredited laboratory in London, the Drug Control Centre, King's College London ("the Laboratory"). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's *International Standard for Laboratories*.
8. On 15 August 2017, the Laboratory reported that analysis of the A Sample returned an Adverse Analytical Finding for the Prohibited Substance higenamine and its metabolite coclaurine.
9. UKAD charged Mr Fedorciow with a violation of ADR Article 2.1 by letter dated 21 August 2017 (the "Notice of Charge"). The Notice of Charge also provisionally suspended him from all sporting activities in accordance with the provisions of ADR Article 7.9.2.
10. By an email dated 17 September 2017, Mr Fedorciow applied for an order lifting the provisional suspension in accordance with the provisions of ADR Article 7.9.3. NADP President, Mr Charles Flint QC, rejected that application by his Decision on Provisional Suspension dated 02 October 2017.

THE CHARGE

11. Mr Fedorciow admitted the violation of Article 2.1 in his email of 17 September 2017. The issues to be determined by the Tribunal therefore related to any period of Ineligibility to be imposed and the start date for any period to commence.

PERIOD OF INELIGIBILITY UNDER THE ADR

12. This was Mr Fedorciow's first ADR violation. ADR Article 10.2 provides:

10.2 The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1 [...] that is the Athlete's [...] first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

- (a) 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.*
- (b) The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.*

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

The starting point for the Tribunal was therefore to adopt the sanction set out at ADR Article 10.2.1(b), namely two years subject to any consideration of the issue of intention.

'INTENTION UNDER THE ADR'

13. The term intentional is defined in ADR Article 10.2.3 as follows:

[...] the term "intentional" is meant to identify those Athletes [...] who cheat. The term, therefore, requires that the Athlete [...] 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 [...]

14. Mr Fedorciow openly declared the use of "Mentality", an over-the-counter ("OTC") supplement containing higenamine hydrochloride, in section 25 of his Doping Control Form (exhibit AF/4).

15. UKAD therefore did not positively advance the case that Mr Fedorciow had acted intentionally, stating that they could not demonstrate either 'significant risk' or 'manifest disregard'.

16. The Tribunal thus, applying ADR Article 10.2 when considering the question of penalty, took a starting point of two years, subject to any potential reduction pursuant to ADR Articles 10.4 and 10.5.

'FAULT' AND 'NEGLIGENCE' UNDER THE ADR

17. Mr Fedorciow accepted some Fault or Negligence and therefore did not seek a reduction pursuant to Article 10.4. However, he gave evidence before the Tribunal and argued that this Fault or Negligence was not 'significant'.

18. ADR Article 10.5.1(a) provides:

10.5.1 Reduction of Sanctions for Specified Substances [...] for Anti-Doping Rule Violations under Article 2.1, 2.2 or 2.6:

(a) Specified Substances

Where the Anti-Doping Rule Violation involves a Specified Substance, and the Athlete [...] can establish No Significant Fault or Negligence, 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 [...] degree of Fault.

19. The definition of 'No significant Fault or Negligence' within the ADR is:

The Athlete [...] 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 relation 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/her system.

20. The definition of 'Fault' within the ADR is:

Any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's [...] degree of Fault include, for example, the Athlete's [...] experience, [...] the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's [...] degree of Fault, the circumstances considered must be specific and

relevant to explain the Athlete's [...] departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

THE STATUS OF HIGENAMINE

21. Counsel for Mr Fedorciow submitted that higenamine's status is controversial and cited the case of Sakho where Professor Richard Bloomer questioned whether the substance is actually a beta-2 agonist.
22. Mr Nick Wojek, Head of Science and Medicine at UKAD, gave evidence to the Tribunal. He clarified that higenamine has been banned by WADA from 2013 onwards as a general beta-2 agonist. However, a decision was taken in mid-2016 to mention it specifically in the 2017 List.
23. Counsel for Mr Fedorciow submitted that UKAD did not issue a warning on higenamine until 21 August 2017, showing that its status remained unclear even after Mr Fedorciow's failed test.
24. It was further submitted that, if athletes search The Global Drug Reference Online ("Global DRO") for the compound 'higenamine hydrochloride' (as it is named on the label for Mentality) rather than 'higenamine', they do not receive an exact match (as shown in exhibit NW8). Other substances, however, are identified by their compound form. Mr Wojek stated that the two terms are used interchangeably.
25. The Tribunal found that the arguments in paras 21, 22 and 24 were not sufficient to allow them to consider the Athlete to avail himself of the provisions of Article 10.5.2. The Tribunal concluded that once higenamine was added to the 2017 List, it was unequivocally banned for all athletes, regardless of:

25.1 any pharmacological debates over its status as a beta agonist;

25.2 any previous decisions finding that its status as a Prohibited Substance was unclear; and

25.3 any subsequent specific warnings issued by UKAD.

26. The Tribunal also considered the submission as to the nomenclature of the drug to be academic, as Mr Fedorciow did not actually search, nor did he, on his evidence before the Tribunal, know about, Global DRO. In any event, a search for 'higenamine hydrochloride' would have listed 'higenamine' as the fourth suggested 'possible match' below. In the Tribunal's view this would have prompted any reasonable Athlete to conduct further searches.

CHRONOLOGY OF EVENTS

27. Counsel for Mr Fedorciow also emphasised that Mr Fedorciow's degree of Fault depended on the scope and timing of what checks he had made when compared with the dates on which he purchased and used Mentality.

28. Mr Fedorciow stated that he cross-referenced every ingredient in his supplements against the 2016 Prohibited List (the "2016 List") in January 2016. He told the Tribunal that he had read the List in full rather than using any search functions. This process involved reviewing nine pages of drugs listed alphabetically within fifteen categories. For a supplement such as Mentality, containing several dozen ingredients (photograph at exhibit AF/6), this process he said could have taken at least one hour.

29. Mr Fedorciow bought Mentality on 20 December 2016 (receipt at exhibit AF/5), having checked the entire 2016 List against the ingredients two days before. He received an email from BWL regarding changes to the Prohibited Substances on 21 December 2016 (an exact copy at exhibit AM3). This was linked to further information on BWL's website and to the UKAD document "100% Me" (exhibits AF8, NW3 and AM4). Mr Fedorciow did not check Mentality against this document, which mentioned higenamine specifically in the section 'Always Research Supplements'. He did read the UKAD document "2017 Prohibited List – Summary

of Changes" (exhibits AF/1 and AF/2), but did not see higenamine, which was included in the section "How you can help your athletes" (sub-section "Remind athletes of the risks related to supplements"). He also checked the BWL document "Summary of Changes" (exhibit AF/3), which does not mention higenamine.

30. Mr Fedorciow checked the entire 2017 List against his new supplements in Easter 2017. He did not check for higenamine, as Mentality was by then not a 'new' supplement for him.
31. Mr Fedorciow took Mentality the day before the Championships, after checking every ingredient against the 'Stimulant' section of the 2017 List only. This section does not contain higenamine.

NO SIGNIFICANT FAULT OR NEGLIGENCE

32. Counsel for Mr Fedorciow submitted that Mr Fedorciow did not check Mentality against the entire 2017 List because his purchase of the product pre-dated the 2017 List. He submitted that it was reasonable, even once the 2017 List was published, to rely on a combination of the 2016 List and the "Summary of Changes". In the latter, higenamine was not listed in the most prominent section.
33. Counsel for Mr Fedorciow argued that 100% Me, the document which did mention higenamine, was not advertised as prominently to Athletes as the other Summary of Changes documents.
34. In the 2017 List, higenamine is named as a class S3 Prohibited Substance. However, Mr Wojek acknowledged that Mentality is a stimulant. Given this context, it was not unreasonable, according to Counsel for Mr Fedorciow, to check only the 'Stimulants' section before taking the supplement, particularly having already checked the 2016 List and Summary of Changes in December 2016.
35. Counsel for Mr Fedorciow considered the specific fault factors under the ADR:

- 35.1 Regarding 'experience', Mr Fedorciow only joined the BWL in 2012, is an amateur, has no assistance with supplements, is not a pharmacist, and had to check around 50-70 ingredients.
- 35.2 Regarding the 'degree of risk', OTC drugs were considered less risky by the Court of Arbitration for Sport ("CAS") in the Sharapova case. Furthermore, Ms Sharapova was found to have had a justifiably reduced perception of risk because no specific warning was issued for meldonium.
- 35.3 Regarding the 'level of care and investigation', it was sufficient for Mr Fedorciow to check the 2016 List only.
- 35.4 Regarding 'departure from expected standard behaviour', he submitted that this was an extremely unusual set of circumstances, as is evidenced by the fact that UKAD did not even attempt to show intention.
- 35.5 In Sharapova, the CAS found that Athletes are not expected to take every step in each and every circumstance. Mr Fedorciow did not omit to do anything that an ordinary person would do and, while he did not take every step available to him, he took all steps required under the circumstances.
36. UKAD submitted that Mr Fedorciow knew about the rules and their importance, particularly given his background in junior international rugby. He could not therefore take 'refuge in naivety and ignorance'. Mr Fedorciow had admitted that he understood the importance of compliance and also knew that supplements were particularly high risk. When using a supplement for the first time, Mr Fedorciow stated that he would always take extra care by conducting the required checks.
37. UKAD further submitted that when higenamine was clearly put on the 2017 List, Mr Fedorciow did not do all that he reasonably could have done to acquaint himself with which substances were prohibited. A reasonable Athlete would have checked the ingredients against the full list. Mr Ashley Metcalfe, Chief Executive of BWL, emphasised that this is always the Athlete's responsibility.
38. The Despres case distinguished between every conceivable step an Athlete 'could' take and every reasonable step that an Athlete 'ought' to take. UKAD argued that

Mr Fedorciow failed to carry out the necessary steps. While acknowledging that Athletes cannot reasonably follow all steps in every circumstance, the Sharapova case found that they can at a minimum always read a product's label for the ingredients and cross-check them all against the Prohibited List. Mr Fedorciow therefore did not do everything that he reasonably could have done.

TRIBUNAL'S FINDINGS

39. The Tribunal concluded there was no justification to reduce the period of Ineligibility from two years.
40. BWL had sent an email which provided a link to the 100% Me document, which expressly named higenamine as a Prohibited Substance. There was no excuse for Athletes to ignore its contents and fail to absorb the contents of the note in its entirety. There was no reasonable excuse for Mr Fedorciow's failure to read a short two page bulletin, in which the relevant information was placed prominently and clearly.
41. Mr Fedorciow also knew about the increased risk of supplements, which should have prompted him to cross-check all of the ingredients against the entire 2017 List. Athletes are warned about supplements, so there is a greater need for them to be careful and a greater burden on them to check. Mr Fedorciow, by his own admission, was prepared to take an hour to check in January 2016, so it was incumbent on him to read the 2017 List in full. He should have also have read the 'Supplements' section of the "Summary List" and, as BWL's email recommended, searched Global DRO.
42. Even if an Athlete is not required to take every step, it is their 'core responsibility' under ADR Article 1.3.1 to acquaint themselves with the substances on the Prohibited List, what products they are taking and whether those products comply with those rules. The fact that Mr Fedorciow had already checked the 2016 List did not negate this responsibility, and a cursory search of just one category of the 2017 List was insufficient to meet these requirements.

PERIOD OF INELIGIBILITY

43. Pursuant to ADR Article 10.2.2, the Tribunal concluded that the sanction is a period of Ineligibility of two years.
44. In reaching this final conclusion the Tribunal determined that Mr Fedorciow had not established that he bore No Significant Fault or Negligence for the violation. As such, he was not eligible for any reduction of the period of Ineligibility for the purposes of ADR Article 10.5.

DECISION

45. The Tribunal determined that Mr Fedorciow's doping offence under ADR Article 2.1 had been admitted and that it had been established that the A Sample tested positive for the Prohibited Substance higenamine and its metabolite coclaurine.
46. The Tribunal concluded that Mr Fedorciow will be subject to a period of Ineligibility of two years commencing on 15 July 2017 and concluding at midnight on 14 July 2019.
47. This period of Ineligibility starts from the date of sample collection in recognition of Mr Fedorciow's timely admission of the ADRV under ADR Article 10.11.2.
48. There is a right to appeal against this decision as provided for in ADR Article 13.4 and Article 13 of the Procedural Rules.



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