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Rugby League player suspended for 18 months for anti-doping rule violation

The Sports Tribunal has suspended amateur rugby league player Siliga Kepaoa for 18 months for the presence of the prohibited substance higenamine. Higenamine is classified as an S3 Beta-2 agonist, a specified substance prohibited at all times in and out of competition.

Mr Kepaoa plays rugby league for the Point Chevalier Pirates and Akarana Falcons. He twice tested positive for higenamine in samples he provided following a rugby league training session on 19 September 2017 and following the National Premiership final on 7 October 2017. Mr Kepaoa had not been notified of the first positive test before the second sample was collected. For the purposes of sanction, the two violations are treated as a single anti-doping rule violation. Mr Kepaoa was provisionally suspended without opposition on 13 November 2017. Mr Kepaoa promptly admitted both violations.

On 9 January 2018, a joint memorandum was provided to the Tribunal on behalf of Drug Free Sport New Zealand (DFSNZ) and Mr Kepaoa. In the memorandum the parties agreed an appropriate sanction. The presumptive period of ineligibility for the unintentional presence of a specified substance (such as higenamine) is two years, but this period may be reduced if the athlete can show no significant fault or negligence in relation to the violation. DFSNZ did not contend that the violation was intentional and accepted that Mr Kepaoa's conduct involved careless mistakes.

The source of higenamine in Mr Kepaoa's samples was due to his consumption of "Oxyshred" advertised as a "super potent thermogenic fat burner". Mr Kepaoa disclosed the use of the product on his doping control form, which lists higenamine on the label.

The assessment as to whether an athlete has no significant fault in relation to a violation is a fact specific exercise. Having considered all the evidence and the detailed memorandum jointly filed, the Tribunal was satisfied that Mr Kepaoa had shown there had been no significant fault in testing positive for higenamine but there was a degree of fault falling within the "high end of the range of the defence".

Mr Kepaoa acknowledged he had received some education about drugs in sport prior to the start of the Falcon's 2017 season and was aware that he needed to ensure he was not using supplements with banned substances in them. Mr Kepaoa also accepted he should not have relied on a salesperson's advice as to whether Oxyshred contained a banned substance and should have checked the product for himself. The Tribunal considers Mr Kepaoa should have taken more care but that his failure to do so should be reflected in the relatively limited deduction allowed from the otherwise mandatory 2 year suspension period. The Tribunal accepted the agreed recommended 18 month suspension period. In light of his immediate acknowledgment of the breach Mr Kepaoa's period of suspension from participating in sport was backdated to 19 September 2017.

The Tribunal commended the parties for the responsible way in which they worked this proceeding through to an agreed position that the Tribunal was able to accept without the need for a hearing. The Tribunal acknowledged that while the evidence in this case was not tested by cross-examination, DFSNZ would not have entered into this agreement without satisfying itself that the facts were clear. The Tribunal indicated its support for similar approaches in cases where there are not strong differences between the parties in relation to the facts and the issues arising from them.

The decision in this case is available for download from the website of the Sports Tribunal (www.sportstribunal.org.nz). See *Drug Free Sport New Zealand v Siliga Kepaoa* (ST 10/17). Copies can also be obtained directly from the Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: info@sportstribunal.org.nz).