

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

A N D ADAM STEWART

Respondent

AND BIKE NZ INCORPORATED

Interested Party

DECISION

Dated 8 September 2010

Hearing: By telephone conference on 7 September 2010

Counsel: Paul David and Issac Hikaka for Applicant
Garth Gallaway and Ben Walker for Respondent
Maria Clarke for Interested Party

Present: Graeme Steel (Drug Free Sport)
Adam Stewart
Alistair Stewart (father of Respondent)
Kieran Turner and Mark Elliott representing Interested
Party

Panel: Barry Paterson QC, Chairman
Adrienne Greenwood
Carol Quirk

Registrar: Brent Ellis

1. Adam Stewart, a member of Bike NZ and the New Zealand Commonwealth Games cycling team, has admitted anti-doping rule violations. The matter came before the Tribunal by way of an application by Bike NZ for provisional suspension. A hearing was scheduled for Monday, 6 September 2010.
2. The hearing of the provisional suspension application was adjourned until the evening of 7 September 2010 when Mr Gallaway, counsel for Adam Stewart, was unable to access his office because of the earthquake. In the interim, Drug Free Sport filed its substantive application.
3. At the hearing Adam Stewart, as he had indicated during the day, admitted the allegations against him. With the agreement of the parties, the provisional suspension application was therefore not needed to be considered and the substantive application was considered instead at the hearing. The hearing heard submissions as to the appropriate sanction.

Allegations admitted to

4. The application made alternative allegations. The admissions were to the following allegations:
 - (a) The Athlete attempted to use prohibited substances between 31 March 2009 and 19 May 2010 by ordering, purchasing and arranging for the delivery of prohibited substances to a PO Box 69-194 Lincoln, namely Eprex Epoetin alfa 4000iu/0.4ml (prohibited under S2 Prohibited List), Pregnyl Chorionic Gonadotropin 5000IU (prohibited under S2 Prohibited List) and Pregnyl Solvent (required for the administration of Chorionic Gonadotropin).

- (b) The Athlete was in possession of human chorionic gonadotropin (hCG) (a prohibited substance), in or about 24 June 2009.

The Facts

5. On 31 March 2009, PO Box 69-194 was opened in Lincoln in the names of Ben Owen and Adam Stewart. A renewal of the subscription for the PO Box was paid in May 2010.
6. On about 19 May 2010, New Zealand Customs intercepted a parcel and referred it to the Ministry of Health (MedSafe). The parcel was found to contain six pre-filled syringes labelled Eprex Epoetin alfa 4000iu/0.4ml ("**EPO**"), one ampoule labelled Pregnyl Chorionic Gonadotropin 5000IU ("**hCG**") and one ampoule of Pregnyl Solvent. The importation was unlawful in terms of the Medicines Act 1981. The substances are prohibited substances under the WADA Prohibited List.
7. hCG is a hormone which is used increasingly in conjunction with anabolic steroids to counteract the effect of steroids and restore testicular size and testosterone production. EPO is the hormone which regulates red blood cell production. It can be used to increase red blood cell production with a consequent increase in hematocrit. It has a history of use as a blood doping agent in endurance sports.
8. The intercepted parcel was addressed to Ben Owen, PO Box 69-194, Lincoln. The PO Box had been opened in March 2009 by a person who produced Adam Stewart's driving licence. Adam Stewart has admitted that Ben Owen was a fictitious person.
9. Mr Stewart was interviewed in Germany on behalf of Drug Free Sport both about the package and also a further purchase in June 2009. He admitted that he had opened the Box and that on or

about 24 June 2009, he had ordered and paid for hCG over the Internet. The hCG was received by him after being forwarded to the Box. His explanation was that he had been told by a person in a gym that the substance was fine to take but after receiving it he heard that a baseball player had tested positive for it and he therefore got rid of it without using it.

10. Adam Stewart admitted that he had ordered and purchased, for himself, the material in the intercepted package which included the EPO, hCG and Pregnyl Solvent.

The Sanction

11. Under rule 14.7.4 of the Sports Anti-Doping Rules (2010) (the Rules), the two incidents are to be treated as a single violation. Under rule 14.2 of the Rules, the sanction for a first violation is a period of two years' ineligibility. However, the Tribunal is entitled to increase the period of ineligibility if there are aggravating circumstances (rule 14.6).
12. Drug Free Sport does not seek an increase in the period of ineligibility. There are factors in this case which could fall into the "*aggravating circumstances*" referred to in rule 14.6. However, in view of Drug Free Sport's submissions and the prompt admission and co-operation by Adam Stewart, the Tribunal will impose the minimum period of 2 years' suspension.
13. The consequences on the Athlete are severe. Cycling has been his life and the suspension will not only prevent him from competing at the forthcoming Commonwealth Games but also, as the suspension will expire shortly before the next Olympic Games it will probably prevent him being considered for those Olympics. Consequences however must follow in the case of an athlete who has infringed the Sports Anti-Doping Rules as Adam Stewart has.

Competition Results

14. Because of the urgency in this matter, the parties did not have time to make submissions on the possible effect of rule 14.8 of the Rules which refers to disqualification of competition results. The Tribunal therefore defers consideration of the application of this rule and has asked the parties to make further submissions on it. A further decision on the application of the rule, and if it applies, the consequences will be made in due course.

15. Adam Stewart's status whether in cycling or in any other sport authorised or sanctioned by any signatory to the Rules will be governed by the provisions of rule 14.10.

Sanction

16. A period of 2 years' ineligibility, commencing from 7 September 2010, is imposed on Adam Stewart.

Dated 8 September 2010



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B J Paterson QC
Chairman