

**Decision**

**International Bobsleigh and Skeleton Federation**

**Anti-Doping Hearing Panel**

**IN THE MATTER OF**

**Mr. Aaron Victorian III**

To:  
Mr. Aaron Victorian III

By e-mail

Date: May 23, 2019

## **I      BACKGROUND**

1. Mr. Aaron Victorian III, born on March 11, 1988, is registered with Bobsleigh CANADA Skeleton, discipline Skeleton.
2. On November 20, 2018 a sample of urine (Sample number 1618738) was collected in competition from Mr. Victorian III (the "**Sample**") at the IBSF North American Cup Park City. On December 19, 2018 the United States Anti-Doping Agency ("**USADA**") informed IBSF about an Adverse Analytical Finding ("**AAF**") regarding the sample of Mr. Victorian III and requested IBSF to overtake the Result Management in this matter.
3. Mr. Victorian III was informed by IBSF by letter of December 21, 2018 that the Sample was sent to the World Anti-Doping Agency ("WADA") accredited laboratory in Salt Lake City, Utah for analysis. The accredited Laboratory reported an AAF to USADA with regard to the above mentioned Sample. The A-Sample contains Benzoyllecgonine, a metabolite of cocaine. Cocaine is listed as a Prohibited Substance in the class of Stimulants (S6) on the WADA Prohibited List.
4. In the same letter of December 21, 2018 Mr. Victorian III was informed that, in accordance with Article 7.9 of the IBSF Anti Doping Rules, version January 2015, and as amended on June 13, 2017 (the "**Rules**"), a provisional suspension was imposed against Mr. Victorian III as from December 28, 2018 on and prior to the final decision being reached at a hearing in this matter, unless Mr. Victorian III was able to provide IBSF with an adequate explanation for the AAF before the aforementioned date at 3pm. Mr. Victorian III was informed through the notification about the consequences specified in article 10.2 of the Rules for a first violation, which means a potential period of ineligibility of up to 4 years in case of an intentional Anti-Doping Rule Violation ("ADRV").
5. The IBSF advised Mr. Victorian III in its notification of December 21, 2018 of his right to have the B-Sample tested and advised him that he should inform the IBSF of his decision to have it tested by no later than by December 28, 2018. The B-Sample analysis was planned to be performed by the same WADA Accredited Laboratory which performed the A-Sample analysis.

Mr. Victorian III was advised that a failure to request the B-Sample analysis within the specific time period provided would be considered as a waiver to the B-Sample analysis.

6. The IBSF further advised Mr. Victorian III that should he waive the right to have the B-Sample analysis, he will be deemed to have accepted the results of the A-Sample analysis.
7. On December 21, 2018 Mr. Victorian III informed the IBSF that he would like to have the B-Sample tested. The B-Sample analysis took place on January 15, 2019 in Utah (see hereinafter).
8. By letter of December 24, 2018 Mr. Victorian III provided IBSF with a formal letter denying the use of cocaine and its metabolite Benzoylcgonine. He also requested for the provisional suspension to be lifted.
9. On December 31, 2018 Mr. Victorian III requested a Provisional Hearing in order to have the provisional suspension lifted. The Provisional Hearing took place on January 7, 2019 by Skype, conducted by Dolf Segaar (chairman), Dr Alessia Di Gianfrancesco and Prof Dr Peter Hemmersbach. On January 8, 2019 the IBSF informed Mr. Victorian III that the Hearing Panel decided to uphold the provisional Suspension. It was considered:

*"The ADHP has convened a skype hearing with you yesterday in order to discuss your request to have the provisional suspension lifted. Your earlier submission and the outcome of the skype meeting did not give reason for the ADHP to follow you in your request. With a view to similar CAS decisions in respect of positive cases following the drinking of coca tea, even without significant fault or negligence it is likely that some period of ineligibility will result from the current matter, giving the strict liability reasoning of the code and the responsibility that comes from that principle that an athlete has to avoid anti-doping rule violations. There is in this case therefore no legitimation to lift the provisional suspension".*

10. The IBSF notified Mr. Victorian III on January 28, 2019 that the result of the B-Sample Analysis proved to be positive for the same AAF as was found in the A-Sample of Mr. Victorian III. Mr. Victorian III was invited to provide the IBSF with a written explanation by February 12, 2019 and if denying any wrongdoing explain why he is of the opinion not to bear any fault or negligence or significant fault or negligence for the presence of the prohibited substance. It was explained to Mr. Victorian III that his case will be submitted to a panel of three members of the IBSF Anti-Doping Hearing Panel (the "**IBSF ADHR**") as soon as his file would be considered by the IBSF as complete.

In the case Mr. Victorian III would wish to be heard or present witnesses in person before the IBSF ADHP, he was entitled to request a hearing by February 12, 2019. He was informed that

a failure to challenge the IBSF assertion that an Anti-Doping Rule Violation has occurred within the specific time periods provided, will be considered as a waiver to a hearing.

With the notification of January 28, 2019 the ADAMS Test Report of the B-Sample was sent to Mr. Victorian III.

11. No response from Mr. Victorian III was received by the IBSF at the deadline of February 12, 2019. On February 20, 2019 the IBSF notified Mr. Victorian III of the fact that it did not receive any written explanation as well as no hearing request, for which reason the IBSF decided to send out in that same letter a new AAF notification, requesting Bobsleigh Canadian Skeleton to confirm the receipt as well as to forward the notification to Mr. Victorian III. The deadline for response was extended to March 1, 2019. Mr. Victorian III confirmed the same date the receipt of the notification, but did not provide IBSF with any statement by the deadline of March 1, 2019.
12. On March 12, 2019 the IBSF informed Mr. Victorian III that it assumes that Mr. Victorian III waives his right to a hearing. Mr. Victorian III was informed that all documents were going to be send to the IBSF ADHP, which was done at the same date.
13. The IBSF ADHP is of the opinion that Mr. Victorian III has been given sufficient time to provide any further statement or explanation regarding the AAF and/or request for a hearing before the IBSF ADHP. It is in addition of the opinion that Mr. Victorian III must be considered to have waived his right to ask for a hearing. The letter of Mr. Victorian III of December 24, 2018 to IBSF in which Mr. Victorian III denies the use of the substance cocaine will be regarded as a formal statement of defense by Mr. Victorian III.

## **II. DECISION IN RELATION TO THE ANTI-DOPING RULE VIOLATION**

### **II A. General Observations**

14. The IBSF ADHP noted that the Rules, which incorporate the World Anti-Doping Code, has come into effect as from January 1, 2015 (amended on June 13, 2017) and are applicable to the facts of this particular case.
15. The Rules are applicable to any person who participates in sport at the international level. As mentioned above Mr. Victorian III is registered with the Bobsleigh CANADA Skeleton. The Rules are applicable to Mr. Victorian III.
16. Article 10 of the Rules sets out the various sanctions that can be applied to individuals for breach of the Rules.

17. The Panel notes that the presence of a Prohibited Substance in the body of an Athlete constitutes a violation of article 2.1 of the Rules. According to Article 10.2 of the Rules a violation of article 2.1 will lead to a period of ineligibility of four years where the violation does not involve a Specified Substance, unless the Athlete can establish that the Anti-Doping Rule Violation was not intentional.
18. The AAF in the case of Mr. Victorian III does not involve a Specified Substance. According to the WADA Code 'definition in article 4.2.2. all Prohibited Substances shall be 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, to which exception the AAF in this case belongs.
19. This leads the IBSF ADHP to the general conclusion that the sanction on the AAF in the case of Mr. Victorian III will be a period of ineligibility of four years, unless it is established that the Anti-Doping Rule Violation was not intentional. In the event it is established that Mr. Victorian III bears No Significant Fault or Negligence with regard to the ADRV the period of Ineligibility may be reduced.

## **II B. Definition of "Intentional"**

20. According to article 10.2.3 of The Rules 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.
21. The IBSF ADHP did receive on December 24, 2018 a submission from Mr. Victorian III with regard to the ADRV in this matter, in which he stated that he never intentionally ingested cocaine.

## **II C. Submission of Mr. Victorian III**

22. Mr. Victorian III has explained to the IBSF ADHP in writing and at the time of the Provisional Hearing in January 2019 that he had ingested a tea that had coca leaf in it. He had shown to the IBSF ADHP pictures of tea boxes of the brand "Windsor" or "Mate Windsor" that mentions on the cover: "calidad de exportacion Coca". The subject product is a Bolivian tea called "Trimate".

23. In his submission Mr. Victorian III argues that first after he was notified about the potential ADRV and informed about the AAF and the substance, he performed research into the metabolite "benzoylecognine" and where it could have come from. From the research he learned that the AAF must have come from drinking the subject tea from coca leaves.
24. According to Mr. Victorian III he follows a race ritual that includes having tea in the morning before every race. Park City, Utah is according to the submission known for being one of the, if not the highest elevation on the sliding tour. Because of this Mr. Victorian III used a very specific tea that should help him with the "harsh symptoms of high elevation and altitude sickness" that he was experiencing.
25. Mr. Victorian III has provided the IBSF ADHP with documentation that should support his conclusion that the AAF was caused by drinking coca tea and had nothing to do with the "stimulate drug of cocaine". The IBSF ADHP has no doubt in accepting the explanation of Mr. Victorian III on the cause of the AAF and therefore concludes that the AAF beyond reasonable doubt has been caused by drinking Coco tea.

#### **II C. The appropriate period of Ineligibility**

26. According to article 10.2.3 of the Rules an Anti-Doping Rule Violation resulting from an AAF for a substance that as the case is here, 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.
27. As the IBSF ADHP concludes from the submission of Mr. Victorian III, the use of coca tea was not used in order to enhance sport performance but was ingested to help Mr. Victorian III to avoid or diminish the symptoms of high altitude sickness.
28. Consequently, the above leads the IBSF ADHP to the conclusion that the ADRV here shall not be considered intentional. The applicable period of ineligibility in cases in which an athlete can establish that the ADRV was not intentional is according to article 10.2.2 of the Rules two years. The IBSF ADHP will take the two years as starting point when considering the appropriate period of Ineligibility. The applicable period of Ineligibility may however be reduced if an athlete established that he or she bears No Significant Fault or Negligence to the ADRV.

#### **No Significant Fault or Negligence**

29. The Rules in conformity with the WADA Code expresses clearly that the articles relating to No Significant Fault or Negligence apply only to the imposition of sanctions; they are not applicable to the determination of whether an ADRV has occurred.
30. The No Significant Fault or Negligence rules only apply in exceptional circumstances. As example the Rules state that the concept does not apply in cases where a positive test results from a mislabeled or contaminated vitamin or nutritional supplement, since the Athlete is responsible for what he or she ingests and has been warned against the possibility of supplement contamination.
31. The IBSF ADHP will focus its decision on the question of whether Mr. Victorian III acted with "No Significant Fault or Negligence" and that therefore it would be reasonable to reduce the period of Ineligibility. It will in doing so take into account the above cited example in the Rules , which although not the same is fairly similar to the subject matter.
32. According to CAS jurisprudence the behavior of an athlete must be compared to the standard of care that can be expected from a "reasonable person" in the athlete's position in order to establish whether there is No Significant Fault or Negligence. If it is considered in this case that Mr. Victorian III has established "No Significant Fault or Negligence" the otherwise applicable period of Ineligibility (here 2 years) may be reduced according to article 10.5.2 of the Rules to a period of Ineligibility not less than one-half of the period of Ineligibility otherwise applicable (so a minimum of 1 year).
33. The IBSF ADHP considers that Mr. Victorian III was or should have been completely aware that he has to fulfill a "duty of care" to avoid at all times that prohibited substance will enter his body. He has to take good notice of the substances that are mentioned on the Prohibited List of WADA. This implicates that Mr. Victorian III is expected to be extremely careful and rigorous with the type of food or drinks he ingests.
34. Mr. Victorian III has in his submission argued that he did not know that sipping coca tea was a source of cocaine and that he did not expect that drinking the subject tea would lead to the ingestion of a prohibited substance.  
In the opinion of the IBSF ADHP Mr. Victorian III should however have made an intellectual link between the coca leaves and the product cocaine, since the tea boxes were referring to "coca" on its cover and it is not hard to make such link, even when there is no further knowledge about the process of production of cocaine.
35. Mr. Victorian III mentioned to have been using coca tea already for years to help him with altitude sickness. Mr. Victorian III however did not show the IBSF ADHP with any evidence relating to

his altitude sickness nor why he never requested medical help or tried other medical remedies in order to cure him.

36. The use of coca tea instead of asking for medical help or using other medical remedies might be explained by the fact that as Mr. Victorian III stated the coca tea was a sufficient remedy for him for years, unknown of the fact that coca leaves may give a positive metabolite, but the use of the subject tea remains the responsibility of Mr. Victorian III.
37. The IBSF ADHP comes to the conclusion that drinking coca tea without further inquiries or research cannot be considered as fulfilling a "duty of care". Mr. Victorian III did not establish in his submission that he could not, even with the exercise of the utmost caution, reasonably have suspected that he had been administered a Prohibited Substance.
38. The IBSF ADHP has taken notice of the CAS decision between ATP and Professional Tennis Player [H] (CAS 2004/A/690) where CAS in paragraph 55 concluded in a similar matter relating to coca tea that if the athlete had only consumed a tea made from coca leaves, the CAS panel be of the opinion that the athlete was not significant negligent in drinking the tea that was offered to him without enquiring about the nature or source. The athlete in that matter was found negligent after all because he also chewed leaves of unknown origin (coca leaves as it appears later to be).
39. The IBSF ADHP however does not consider the above CAS decision applicable to this matter, since the aforementioned athlete was offered a cup of tea by a third party that offered the tea as "a cup of herbal tea, that would help against high altitude sickness". As expressed above the IBSF ADHP considers it of importance that it was Mr. Victorian III's decision to use the coca tea, knowing as expressed on the tea box that it was extracted from coca leaves and that he was using the tea on a regular basis without further inquiries or research. Research could have made him aware of the risks he was taken by drinking the tea. Research could have shown him as will the CAS decision mentioned above and several other CAS decisions relating to coca tea.
40. In conclusion the IBSF ADHP finds that Mr. Victorian III did not exercise the caution that was expected from him in the subject matter and that he therefore acted with significant negligence. The sanction of two years' period of ineligibility provided for in article 10.2.2 of the Rules may therefore not be reduced and will be upheld by the IBSF ADHP.

#### **Commencement of the period of Ineligibility**



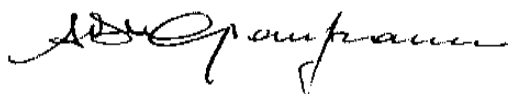
41. Article 10.11 of the Rules stipulates: "(...), the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed."
42. Article 10.11 paragraph 3 provides an athlete credit for the period of Provisional Suspension, which in the event of Mr. Victorian III started on December 29, 2018.
43. Since the ineligibility is imposed on Mr. Victorian III by means of this decision and credit is given for the period of Provisional Suspension, the period of Ineligibility will end 2 years after December 29, 2018, thus ending on December 29, 2020.

### **III Decision**

44. The AAF constitutes an Anti-Doping Rule Violation by Mr. Victorian III for which the IBSF ADHP sanctions Mr. Victorian III with a period of ineligibility of 2 years as from the date of the Provisional Suspension, thus ending on December 29, 2020, during which period Mr. Victorian III is not entitled to participate in any competition or activity, as stipulated in article 10.12 of the Rules.
45. Since the Anti-Doping Rule Violation by Mr. Victorian III was committed in competition, the IBSF Doping Panel automatically disqualifies the result obtained in the competition (article 9 of the Rules) and according to Article 10.8 of the Rules, all results obtained by Mr. Victorian III subsequent to the date of Sample collection until the start of the period of Ineligibility will also be disqualified.
46. This decision shall be communicated by the IBSF to Mr. Victorian III and Bobsleigh CANADA Skeleton.

### **VI COSTS**

47. The IBSF Doping Panel noted that no application was made by the IBSF in respect of costs. Therefore, each party shall bear its own costs.



Dr Alessia di Gianfrancesco



Prof Dr Peter Hemmersbach



Prof Dr Ian Blackshaw



Dolf Segaar