SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

Nº: SDRCC DT 18-0290
(DOPING TRIBUNAL)

CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)
U SPORTS

AND

KARLA GODINEZ
(Athlete)

AND

GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)
(Observers)

Before:

David Bennett (Arbitrator)

Appearances and Attendances:

On behalf of the Athlete:	Karla Godinez Emir Crowne (Counsel) Amanda Fowler (Counsel)
On behalf of CCES:	Meredith MacGregor (Counsel) Alexandre Maltas (Counsel)

U SPORTS, WADA and the Government of Canada did not participate in the hearing.

AWARD

06 September 2018

Overview

1. On February 9, 2018, Karla Godinez (the Athlete) provided a sample to be tested in accordance with the Canadian Anti-Doping Program (CADP) following the Canada West Wrestling Championships in Edmonton, Alberta. The sample was tested by a World Anti-Doping Agency (WADA) accredited laboratory and found to contain SARM LGD-4033, a prohibited substance classified as an S1. Anabolic Agent on the 2018 WADA Prohibited List (the Prohibited List).

2. The Canadian Centre for Ethics in Sport (CCES) was notified of the adverse analytical finding on March 2, 2018, and then notified the CEO of U SPORTS, Graham Brown, of the finding on May 30, 2018.

3. The Athlete admitted to the anti-doping rule violation (ADRV) by completing a Timely Admission Form on June 4, 2018. The CCES recommended that a four-year period of ineligibility from competition be imposed on the Athlete.

4. The Athlete has brought this case on the basis that she is not a cheater and has never knowingly taken any performance enhancing drugs. She alleged that the adverse analytical finding was the result of using a supplement contaminated with the prohibited substance. The Athlete argues that because the supplement was contaminated she was not at a significant degree of fault for the adverse analytical finding. The Athlete argues that her degree of fault is at the lowest end of the spectrum and seeks a reduction of the proposed period of ineligibility.

5. For the reasons that follow I have granted the Athlete's request and have varied the period of ineligibility to one year. I ordered that the period of ineligibility begin on February 9, 2018, the date of the sample collection or the day after the Athlete last competed.

The Parties

Karla Godinez

6. The Athlete is a student at the University of Fraser Valley (UFV) and is a wrestler in the varsity wrestling program at UFV.

The Canadian Centre for Ethics in Sport

7. CCES is a not-for-profit organization that is responsible for administering the CADP. The CADP rules are compliant with the World Anti-Doping Code published by WADA.

Witnesses

8. The following witnesses provided evidence at the hearing:

Dr. Christiane Ayotte

9. Dr. Ayotte is the Director of the INRS Doping Control Laboratory, a WADA-accredited laboratory. Dr. Ayotte holds a Ph.D. from the University of Montreal in organic chemistry and has a background in studying the characterization of the urinary metabolites of anabolic steroids. She is recognized world wide as an expert in anti-doping.

Kevin Bean

10. Mr. Bean is the Senior Manager, CADP, at CCES.

Mr. Paul Scott

11. Mr. Scott is the Chief Executive Officer of KorvaLabs, a mass spectrometry laboratory located in San Dimas, California, with anti-doping being a primary competency. Mr. Scott is an analytical chemist and the Former Director of Clients at the UCLA Olympic Analytical Laboratory. He is a founder and the Chief Science Officer of the Agency for Cycling Ethics, Inc. Mr. Scott has consulted for and appeared as an expert witness in over 80 cases covering various professional sports areas, organizations, and events including, cycling, NFL, and MLB as well as the Olympics.

Dr. Charles Wong

12. Dr. Wong's holds both a Bachelor of Science and Master of Science degree from the Massachusetts Institute of Technology (MIT) and a Ph.D. from the University of Minnesota. Dr. Wong is the Jinan University Professor Chair and a professor at the University of Winnipeg, joint-appointed in the Department of Chemistry and the Department of Environmental Studies and Sciences. He is the former Canada Research Chair in Ecotoxicology at the University of Winnipeg.

Procedure

13. The hearing proceeded by conference call on August 17, 2018. I issued a short decision on August 22, 2018. This is the reasoning behind that decision.

Issues

14. At issue is the severity and length of the sanction to be imposed on the Athlete.

15. The Athlete admits the ADRV and that SARM LGD-4033, a prohibited substance, was found in her sample. As such, this case is concerned with the appropriate sanction. The following issues were argued:

a. Was the Athlete's ADRV unintentional?
b. If it was unintentional, was the ADRV the result of significant fault or negligence?
c. If it was not, what is the degree of fault that can be attributed to the Athlete?

Position of the Parties

CCES's Position

16. The CCES submits that a four-year period of ineligibility is the appropriate sanction to be imposed on the Athlete for the ADRV. This sanction was proposed as a default sanction for an ADRV and the CCES submits that the Athlete has failed to prove that a sanction reduction is warranted.

17. The CCES submits that the Athlete has failed to show that the ADRV was unintentional, arguing that the Athlete has not shown how the prohibited substance entered her system. Further, the CCES submits that through her anti-doping education, the Athlete was aware of the significant risks of supplement usage.

18. In support of its claims, the CCES relies on the expert evidence supplied by Dr. Ayotte. Dr. Ayotte testified during the hearing that on or about February 13, 2018, the INRS received the urine sample provided on February 9, 2018 by the Athlete. Sample A tested positive for LGD-

4033 in the amount of 8 pg/ml. Dr. Ayotte testified that LGD-4033, a SARM that is a replacement for anabolic steroids without the same negative side effects, was present in the form of metabolites, showing that the parent had been metabolized. Dr. Ayotte testified that Sample B was also tested and that it too tested positive for LGD-4033.

19. Dr. Ayotte testified that when the Athlete's urine sample was analyzed only the metabolized LGD-4033 was present and that she was unable to detect the presence of the parent. Dr. Ayotte testified that generally, after 22 hours, the parent compound is still there with metabolite and that if the sample was taken in the evening on the same day the prohibited substance was consumed, the parent compound would be present. Dr. Ayotte told this Tribunal that in most of the cases she has seen in the similar time range given by the Athlete, the urine sample is normally found to contain the parent compound and that the sample she analyzed was consistent with an athlete taking the substance days ahead of the date upon which they supply a sample. According to Dr. Ayotte, the Athlete more than likely had consumed the prohibited substance at least days before she claims to have taken the Supplement, although Dr. Ayotte could not say how or when exactly the prohibited substance had been consumed.

20. Dr. Ayotte testified that the INRS received the original container from CCES containing what remained of the Supplement; approximately 10 grams of orange powder. The jar had originally contained 1.5 kg of the Supplement with one portion being approximately 48 grams. When the powder was tested using the standard procedure, LGD-4033 was not detected. Dr. Ayotte testified that a documentation package was sent to the INRS from CCES that identified that KorvaLabs had tested the powder at a high concentration. Dr. Ayotte then tested the remaining powder at the same concentration level tested by KorvaLabs and the sample was found to contain 2ng/g of LGD-4033 along with two other prohibited substances, SARM S-22 and Ibutamoren.

21. Dr. Ayotte testified that she was unable to procure from the manufacturer sealed samples of the Supplement from the same batch that was submitted by the Athlete for testing. In addition, Dr. Ayotte was unable to procure the same Supplement from a different batch, as they no longer made the product. Instead, she procured and tested two other supplements, Prime Nutrition Intra Elite Ultra Premium Peri-Workout (Orange Carnage) and Prime Nutrition Intra Elite Ultra Premium Peri-Workout (Grape Titan), neither of which was found to contain a prohibited substance.

22. In addition, the CCES relied on the testimony of Mr. Bean, who testified that the athlete had undertaken anti-doping training in the form of two separate e-learning courses, during which the Athlete was provided with training on the risks of taking supplements. In addition, Mr. Bean testified to an internet search he conducted that came back showing that the manufacturer had been sent a warning letter by the U.S. Food and Drug Administration.

23. Based on this evidence, the CCES submits that the Athlete has failed to show that the ADRV was unintentional and that a four year period of ineligibility is the appropriate sanction.

24. In the alternative, the CCES submits that if the Tribunal accepts that the Athlete's ADRV was not intentional, the appropriate sanction is a two year period of ineligibility from the sport. The CCES argues that the Athlete has not shown "No significant fault or negligence". The CCES

relies on *Vencill*[1] for the principle that athletes are ultimately responsible for the substances entering their bodies:

> Indeed, the Panel finds that Appellant's conduct in the circumstances amounts to a total disregard of his positive duty to ensure that no prohibited substance enters his body. Without wishing to attribute any particular motivation to Mr. Vencill in this case, we hold that for an athlete in this day and age to rely–as this athlete claims he did–on the advice of friends and on product labels when deciding to use supplements and vitamins, is tantamount to a type of willful blindness for which he must be held responsible. This "see no evil, hear no evil, speak no evil" attitude in the face of what rightly has been called the scourge of doping in sport–this failure to exercise the slightest caution in the circumstances–is not only unacceptable and to be condemned, it is a far cry from the attitude and conduct expected of an athlete seeking the mitigation of his sanction for a doping violation under applicable FINA Rules. (at para 62)

25. In addition, the CCES relies on the following statement made on CCES website:

> Athletes are responsible for any prohibited substance found in their sample. Unlike foods and medications, the supplement industry is subject to little government regulation making it impossible for the CCES to confirm whether or not a supplement contains prohibited substances. After a number of anti-doping violations related to supplement use, the CCES would like to stress to the Canadian sport community the extreme risk an athlete runs when using supplements.

26. Accordingly, the CCES submits that athletes must make sufficient inquiries about the substances they ingest. The CCES submits that the following factors are generally considered by arbitrators in assessing athlete's fault and relies on the following authorities:

- The risk of contamination of supplements is well known[2];
- Whether the athlete attempted to contact or seek advice from persons at their respective sport organization about intended use[3];
- Whether the athlete sought medical advice in regard to the supplements[4];
- Whether the athlete made sufficient enquiries about the supplement and its ingredients, and the person who recommended the supplement[5];
- Whether the athlete contacted the manufacturer to ensure their products do not contain any of the substances listed on the WADA Prohibited List[6];
- Whether the athlete had the supplements tested[7];
- The amount of education the athlete has received in regard to doping[8];

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[1] *Vencill v USADA*, CAS 2003/A/484 [*Vencill*]
[2] *UKAD v Warburton and Williams*, SR/00001120227 at para 105(a) [*Warburton and Williams*]
[3] *Warburton and Williams* at para 105(b)
[4] *Warburton and Williams* at para 105(c)
[5] *Warburton and Williams* at para 105(e)
[6] *Powell v JADCO*, 2014/A/3571 at para 10.38 [*Powell*]
[7] *Warburton and Williams* at para 105(g)
[8] *Simpson v JADCO*, 2014/A/3572 at para 10.36 [*Simpson*]

- The experience of the athlete and the level at which the athlete competes[9];
- Whether the athlete declared use of the supplement on their Doping Control form[10]; and,
- Whether the substance was sealed[11].

27. In the alternative, the CCES submits that if the Tribunal accepts that the Athlete has established that her conduct shows no significant fault or negligence, the Tribunal must find that the Athlete's degree of fault, based on the test given in *Cilic*[12] is considerable. The CCES takes the position that the appropriate sanction in this regard is a 20-24 month period of ineligibility.

28. The CCES provides the following reasons for its position that the Athlete's degree of fault is high:

- The Athlete had sufficient anti-doping education and knew the risk of supplement contamination;
- The Athlete did not purchase the tainted supplement directly from the retailer or through a medical professional;
- The Athlete was not advised to purchase or and consume the product by a professional;
- The Athlete did not conduct reasonable internet searches of the product and the manufacturer, which would have warned about the contamination of the manufacturer's products; and,
- The Athlete did not inquire with her coaches, medical professionals or the CCES regarding the consumption of the supplement.

Athlete's Position

29. The Athlete accepts that the sample she provided on February 9, 2018, tested positive for a prohibited substance, SARM LGD-4033, and admits to the ADRV. The Athlete disputes the period of ineligibility recommended by the CCES.

30. The Athlete submits that the ADRV is unintentional and that the elements of intentionality cannot be made out. In support of this, the Athlete submits that the likely source of the prohibited substance was a tainted supplement, Prime Nutrition Intra-MD Mountain Dog (the Supplement). The Athlete testified that this Supplement was given to her by her brother-in-law. The Athlete stated that her brother-in-law is a close, trusted family member who also acts as a type of personal trainer and provides workout and nutritional advice. The Athlete submits that she had been cutting weight in order to make weight for the Canada West Wrestling Championships and was given the Supplement to help with rehydration. The Athlete submitted that when offered the Supplement by her brother-in-law, she carried out an internet search of the listed ingredients and compared the listed ingredients to the prohibited substances found on the Prohibited List. None of the listed ingredients were found to be prohibited substances.

31. The Athlete submits that she had taken the Supplement only two times: once on the night of the weigh-in for the Canada West Wrestling Championships (February 8, 2018), and the following morning, February 9. This was done to help her rehydrate prior to wrestling.

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[9] *Simpson* at para 10.37

[10] *Demir Demirev et al v IWF*, CAS 2015/A/4129 at para 72 [*Demirev*]

[11] *FIFA v KFA and Kang Soo H* at para 189

[12] *Marin Cilic v International Tennis Federation*, CAS 2013/A3327 [*Cilic*]

32. In support of her position, the Athlete relies on the expert evidence of Mr. Scott and Dr. Wong.

33. Mr. Scott provided expert evidence testifying that KorvaLabs received the sample of the Supplement in two Ziploc bags that were not the original packaging of the Supplement. Mr. Scott testified that KorvaLabs tested the amounts of powder at a concentrated level and were able to detect the presence of SARM LGD-4033. Mr. Scott presented evidence that while KorvaLabs did not undertake a quantitative analysis of the amount of SARM LGD-4033 that was present, but a qualitative analysis for the presence of SARM LGD-4033, it was still possible to come up with an estimate for the amount of SARM LGD-4033 that was present in the samples. Based on the estimate, Mr. Scott gave evidence that the low amount of SARM LGD-4033 present in the sample was consistent with a Supplement that had been contaminated.

34. In addition, Mr. Scott told the Tribunal that when he receives a sample that has been deliberately contaminated it is noticeable in the sample reading as the reading of the contamination will spike more drastically than it did in the analysis of the sample provided by the Athlete.

35. The expert evidence given by Dr. Wong corroborated this statement by Mr. Scott. Dr. Wong told the Tribunal that while it is not impossible to self-contaminate, the amount of the prohibited substance found in the Supplement is so slight that an untrained person would have extreme difficulty in self-contaminating the sample. He compared the amount found in the supplement to a speck of dust. According to Dr. Wong, a person would normally need to be versed in chemistry, especially analytical chemistry, in order to self-contaminate in the manner found here. As a result, Dr. Wong stated while there is no way to say where exactly the prohibited substance came from, the likelihood of self-contamination is slight.

36. The Athlete submits that the ADRV was unintentional and submits that, if the Tribunal accepts this argument, that the maximum period of ineligibility should be reduced to two years.

37. Further, the Athlete relies on rules 10.4 and 10.5 and argues that the appropriate sanction should be either:

a. A reprimand and no period of ineligibility as the Athlete's degree of fault is at the lowest end of the spectrum; or
b. A sanction in the form of a four (4) month period of ineligibility, as her degree of fault in the circumstances is at the lower end of the spectrum as she was not significantly at fault due to her consumption of a Contaminated Product, with the ban to begin on the date of Sample Collection (February 9, 2018); or,
c. Any other reduced period of ineligibility that the Tribunal sees fit to impose, to begin on the date of sample collection (February 9, 2018).

38. In support, the Athlete presented the following factors at various times during the hearing as factors that should be taken into consideration when determining whether she conducted herself in a manner showing fault or negligence or, alternatively, *significant* fault or negligence:

- the ADRV was inadvertent as a result of a contaminated product, as the term is defined in Appendix 1;
- the ADRV occurred despite the Athlete having carried out some research into, and investigation of, the Supplement;
- the Athlete's age at the time of the ADRV (19);

- her inexperience as an athlete in relation to doping matters;
- the fact that English is the Athlete's second language;
- that the CADP anti-doping training was out of balance with the harshness of the sanction imposed;
- that submitting the Supplement for independent testing prior to use is unrealistic; and,
- that the Athlete has never had an ADRV prior to the one at issue.

39. The Athlete relies on the decisions of *Warburton and Williams* and *Powell* to support her position.

Standard of Review

40. As rule. 2.1.1 is a strict liability offence that imposes a sanction in the form of a four-year period of ineligibility from the sport, the onus falls to the Athlete to rebut the presumption that she intentionally consumed a prohibited substance. Likewise, the onus falls to the Athlete to show that the ADRV was not through fault, or, alternatively, not through significant fault, as per rules 10.4 and 10.5. The standard of review in this case is on a balance of probabilities.

Analysis

41. Ms. Godinez tested positive for SARM LGD-4033, a substance that is prohibited at all times, according to the Prohibited List. Ms. Godinez accepts that she tested positive for SARM LGD-4033 and that she committed an ADRV. This fact is not in dispute. An ADRV under Rule 2.1.1 of the CADP Rules is a strict liability offence that carries with it a sanction with a four-year period of ineligibility from wrestling under Rule 10.2.1. These Rules read as follows:

> 2.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, *Fault*, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation under Rule 2.1.
>
> […]
>
> 10.2.1 The period of *Ineligibility* shall be four years where:
>
> 10.2.1.1 The anti-doping rule violation does not involve a *Specified Substance*, unless the *Athlete* or other *Person* can establish that the anti-doping rule violation was not intentional.
>
> 10.2.1.2 The anti-doping rule violation involves a *Specified Substance* and the CCES can establish that the anti-doping rule violation was intentional.

42. The presumption underlying Rules 2.1.1 and 10.2.1 is that the athlete intentionally consumed the prohibited substance. Where an ADRV is found and the 10.2.1 sanction imposed, the athlete in question is found to be a cheater. As such, the athlete is both heavily stigmatized within her sport and sanctioned in such a way that can effectively end her career.

43. The Commentary on Rule 2.1.1 says the following:

> [Comment to Rule 2.1.1: An anti-doping rule violation is committed under this Rule without regard to an Athlete's Fault. This rule has been referred to in various

CAS decisions as “Strict Liability”. An Athlete’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Rule 10. This principle has consistently been upheld by CAS.]

It must be pointed out that the comment to Rule 2.1.1 and the other comments throughout the Rules make up the whole of the Rules and guide the interpretation. Accordingly, as the comment to Rule 2.1.1 implies, Rule 2.1.1 is a strict liability rule. Fault, according to the comment, is taken into consideration in determining the consequences of the ADRV. This tells us that the presumption underlying the four-year sanction (that the athlete is a cheater) is rebuttable under Rule 10.2.1.1 where the athlete can show that the ADRV was unintentional.

Was the Athlete’s ADRV unintentional?

44. The presumption that the athlete cheated is rebuttable under s. 10.2.3 where the athlete can show that the ADRV was unintentional. Where she is successful, the Athlete may reduce her ineligibility from competition from four years to two years:

> 10.2.2 If Rule 10.2.1 does not apply, the period of *Ineligibility* shall be two years.
>
> 10.2.3 As used in Rules 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.

45. In order to show that ADRV was unintentional, the Athlete must demonstrate the following two factors identified by rule 10.2.3 of the Rules:

> (a) that she did not knowingly take the prohibited substance; and
>
> (b) there was no significant risk that she manifestly disregarded.

46. I find that athlete did not knowingly take the prohibited substance, SARM LGD-4033. In addition, I find that the Athlete has shown how the prohibited substance entered her system.

47. At the hearing, the Athlete argued that she did not knowingly take the prohibited substance as SARM LGD-4033 was not listed on the Supplement’s label or list of ingredients. She told the Tribunal that the Supplement was given to her by her brother-in-law who had knowledge that the Athlete was in a sport that requires testing for banned substances. While the Athlete’s brother-in-law was not brought as a witness on the point, I find the Athlete credible on this point.

48. The Athlete provided as evidence a photograph of the list of ingredients found in the Supplement, none of which was the prohibited substance SARM LGD-4033.

49. The expert evidence provided by Dr. Ayotte and Mr. Scott worked to show the presence of SARM LGD-4033 despite it not being listed among the ingredients. Both experts confirmed the presence of the prohibited substance when they tested the supplement at a concentrated level. Statements made by Mr. Scott and Dr. Wong further clarified that the low-levels of the SARM LGD-4033 were consistent with a supplement that had been contaminated. In addition, I found Dr. Wong persuasive on the point that the presence of the prohibited substance in the low level detected in testing would have been difficult for a lay person to replicate. He testified that it was equivalent to a “speck of dust”.

50. This evidence was not rebutted by the CCES. In fact, the evidence provided by Dr. Ayotte confirms the claims made by Mr. Scott and Dr. Wong, as it was only when she retested the sample provided by the Athlete at the concentration examined by Mr. Scott that she was able to confirm the presence of the prohibited substance. This fact is consistent with the statements made by Mr. Scott and Dr. Wong.

51. While the experts were unable to test a sealed sample from the same batch as the Supplement consumed by the Athlete, I do not see that this should be a factor used against the Athlete based on the totality of the evidence presented by the experts. None of the experts were able to get an unopened bottle of the Supplement from a different batch to test for prohibited substances as the Supplement had been discontinued by the manufacturer at the time of testing. Dr. Ayotte was able to get two other sealed supplements of different varieties and batches sold by the same company and subject them to similar testing as the Supplement, I do not find the absence of a prohibited substance in these to have much relevance to the matter at hand. One can speculate on any number of reasons why this might be. As such, this point was not given much weight by the CCES and has not been given any in this decision.

52. In other cases, finding a sealed sample from the same batch may be given more weight, however, in the matter at hand I find that the expert evidence is successful in establishing that the Supplement was tainted. I find that the Athlete did not have the wherewithal or expertise to self-contaminate the product to such a minimal degree.

53. During her testimony, the Athlete claimed that she had only taken the Supplement to help with rehydration following her weigh-in of February 8, 2018. The Athlete claimed that she had taken the Supplement only twice: the night of February 8, 2018 and the day of her competition, February 9, 2018. The athlete provided her urine sample on February 9. Based on evidence provided by Dr. Ayotte, I do not find the Athlete to be credible on the claim that she had only taken the Supplement twice. According to Dr. Ayotte, the Athlete’s sample showed that the parent had been metabolized in a manner consistent with somebody who had consumed the prohibited substance at least days before providing her sample. This evidence was not challenged by the Athlete during the hearing except to say that Dr. Ayotte could not with any certainty say how or when exactly the substance had been consumed and in what form. Only that it was present in the bladder.

54. As a consequence of this statement by Dr. Ayotte, I find that the Athlete is not credible with regard to when she consumed the Supplement and the frequency. I find that the Athlete had likely researched the ingredients, as she has claimed, and believed that the Supplement she was taking was safe. While the use of the Supplement over a period of time may suggest

that there is some intentionality here, I also find that the expert evidence has shown that the Supplement was indeed tainted by someone other than the Athlete and without the Athlete's knowledge.

56. Under the second prong, I find that there was no significant risk that the Athlete manifestly disregarded. The evidence provided by Mr. Bean shows that the CCES has developed materials that warn athletes about the risk of taking supplement that are not NSF-certified supplements. NSF certification certifies that what is on the label is in the bottle through regular testing of the manufacturer. The NSF certification is meant to tell athletes that the product does not contain unsafe levels of contaminants, prohibited substances and masking agents.

57. While there is risk associated with the use of the Supplement, I do not find that the risk was significantly high nor manifestly disregarded in this case. In this regard, I am sympathetic to arguments made by the Athlete that the use of the qualifiers "significant" and "manifest" require a more rigorous threshold. In addition, I find that if the CCES would like to rely on its education to meet the threshold of "significant risk", it must be more forceful in its education on the use of supplements. It is within the authority of CADP and WADA to write rules that describe the use of all supplement that are not NSF-certified supplements as significantly risky or that forbid their use. As such, I do not find it would be appropriate for me to read that into the text of the Rules as I am being asked to do.

58. In addition, the Athlete claims to have researched the listed ingredients on the CCES website (which links the user to the WADA's Prohibited List) and did not see the listed ingredients there. I see no reason to doubt this claim.

59. Mr. Bean showed that he did an internet search using the manufacturer's name and the search term "doping". Mr. Bean told the Tribunal that his search demonstrated that the manufacturer, Prime Nutrition, had issues with cross-contamination and had received a warning letter from the US Food and Drug Administration (FDA). Mr. Bean is much more sophisticated in his knowledge of supplements and how to research the issue. The CCES anti-doping training does not cover how to do an adequate internet search. Mr. Bean stated that this was intentional as they do not want athletes thinking that consuming supplements is safe and that an internet search protects them. The CCES wants athletes to take different steps and not take supplements that are not labelled NSF.

60. The Athlete's internet search was reasonable in this circumstance. As a result, I find that the Athlete attempted to verify that the listed ingredients were not prohibited substances and therefore satisfied the second part of this test. I find that the Athlete and has shown that she is not a cheater. While she tested positive for a prohibited substance, the Athlete did not intentionally take SARM LGD-4033.

Was the ADRV the Result of Significant Fault or Negligence?

61. As a result of finding that Athlete did not intentionally take a prohibited substance, rule 10. 5 permits that the period of ineligibility may be eliminated or reduced below two (2) years. Rule 10.5 reads as follows:

10.5 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence*

10.5.1 Reduction of Sanctions for *Specified Substances or Contaminated Products* for Violations of Rule 2.1, 2.2 or 2.6.

[…]

10.5.1.2 *Contaminated Products*

In cases where the *Athlete* or other *Person* can establish *No Significant Fault or Negligenc*e and that the detected *Prohibited Substance* came from a *Contaminated Product*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, two years *Ineligibility*, depending on the *Athlete's* or other *Person's* degree of *Fault.*

This rule permits the Athlete to reduce her sanction below a two-year period of ineligibility where she can establish:

(a) how the substance entered her body;

(b) that the prohibited substance came from a Contaminated Product (as defined in Appendix 1 of the Rules); and,

(c) finally, and only if, the Athlete proves (a) and (b), above, whether the Athlete's conduct in all the circumstances establish No Significant Fault or Negligence as articulated in the 2015 CADP Rules and in arbitral jurisprudence.

62. As previously stated, the Athlete has established that the prohibited substance entered her body through a tainted supplement.

63. The question now becomes whether the prohibited substance came from a Contaminated Product, as defined in Appendix 1 of the rules: “Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search”. In order to be a “contaminated product”, as it is defined in Appendix 1, the product must contain a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.

64. It has been previously shown that the product label did not disclose the presence of SARM LGD-4033. In addition, I find that this information was not available in a reasonable Internet search.

65. The CCES submitted in its written arguments that “any reasonable set of internet searches would have alerted the Athlete to the fact that Prime Nutrition supplements had a history of including prohibited substances and should be avoided”. It was argued that Mr. Bean’s Internet search, dealt with above, is one of those searches.

66. I see two problems with this position. The first is that it was argued by Mr. Bean that this letter shows that the manufacturer received a warning letter from the FDA for cross-contamination. However, the FDA states:

> This letter concerns your product PWO/STIM, which is labeled and/or offered for sale as a dietary supplement. The Supplement Facts panel on your product label declares AMP Citrate as a dietary ingredient. This ingredient is also called, among other names, 1,3 Dimethylbutylamine, DMBA, 2-amino-4-methylpentane, and 4-methyl-2-pentanamine, and will be referred to in the rest of this letter as DMBA.

In the FDA letter given as evidence, Prime Nutrition was given a warning for its use of 1,3-Dimethylbutylamine ("DMBA"), a substance prohibited in-competition, in a dietary supplement, PWO/STIM. In this letter, the FDA appears to be telling Prime Nutrition about an ingredient that it has labelled, not about a cross-contaminated product.

67. Second, Mr. Bean stated a belief during the hearing that those search terms (the manufacturer's name and the term "doping") could be reasonably expected of an athlete who is doing her due diligence. However, according to the wording contained in definition of a "contaminated product" Appendix 1, this is not the test: the test is with regard to the "product". The product in this case is the Supplement. If I were to interpret this definition as including the manufacturer, as I am being asked by the CCES, it would over-broaden the definition. Instead, the test, according to the definition of a "contaminated product", is a reasonable Internet search of the product.

68. As such, I find that the prohibited substance came by way of a contaminated product.

69. The third step now asks us to consider whether the Athlete's conduct, in all the circumstances, establishes *significant* fault or negligence. "No significant or negligence have been defined in Appendix 1 as such:

> Fault: *Fault* 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* or other *Person's* degree of *Fault* include, for example, the *Athlete's* or other *Person's* experience, whether the *Athlete* or other *Person* is a *Minor*, special considerations such as impairment, 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* or other *Person's* degree of *Fault*, the circumstances considered must be specific and relevant to explain the *Athlete's* or other *Person's* departure from the expected standard of behavior. 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 Rule 10.5.1 or 10.5.2.
>
> No Significant Fault or Negligence: 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 for *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 Rule 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered his or her system.

In this matter, I do not find that the athlete conducted herself in a manner showing significant fault.

70. In its arguments, the CCES highlighted the following three areas as showing that the Athlete's conduct establishes *significant* fault or negligence: (i) the athlete has received sufficient anti-doping education, specifically with regard to the risks of taking supplements; (ii) The Athlete did not purchase the supplement herself, but was given to her by her brother-in-law making it unlikely the Athlete inquired with the store regarding doping risks; and, (iii) the athlete did not perform a reasonable internet search.

71. Firstly, I find that while the athlete has received some anti-doping education through two annual online educational examinations, the athlete's recollection of the anti-doping education was spotty at best. I believe that her inability to recall the specifics of what she had learned to be sincere. In addition, I find that CCES's statements on the use of supplements in the training material to be less than direct. On one hand, the CCES informs athletes that the use of supplements can lead to inadvertent doping while, on the other, stopping short of telling athletes to refrain from using supplements wholesale. Instead, the CCES directs athletes to NSF certified products, which, it says in its materials, "helps minimize the risk of unintentional doping". I find the language could be clearer and more direct on the subject of supplement use to avoid confusion for athletes. The level of education given to the athlete through two annual exams, the second being shorter than the first and used as a sort of refresher, is not sufficient to establish that the athlete's anti-doping education gave her the knowledge of all of the risks of using supplements.

72. While there are risks associated with using supplements that the Athlete ought to have been aware of, the education she was given was that of a varsity athlete and not an athlete competing at the international level. High performance athletes who represent Canada internationally are given more regular and substantial training. As such, it would be patently unfair to say that Athlete received a sufficient anti-doping education that she can be said to have conducted herself with significant fault.

73. Second, it is established fact that the Athlete did not purchase the supplement herself. However, I do not give this fact much consideration. This point was argued for its relevance to establishing that the Athlete could not have determined whether the Supplement came from a reputable source and was not in a position to question the seller about the Supplement, however I do not see how if she had been the one to purchase the Supplement it would have made her any more or less responsible for the ADRV as the product was contaminated in the manufacturing process.

74. Third, I find that the Athlete performed a reasonable internet search given her level of competition and her inexperience with doping protocol. Ms. Godinez claims to have searched the listed ingredients online to confirm that she was not taking any substances prohibited by WADA. While I was not provided with Ms. Godinez's internet history, I was given no real reason to doubt the credibility of this claim.

75. For these reasons I find that there is no significant fault or negligence.

What is the Degree of Fault?

76. I have been asked by the Athlete to find that there is no fault according to Rule 10.4, which says the following:

10.4 Elimination of the Period of *Ineligibility* where there is *No Fault or Negligence*

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault or Negligence*, then the otherwise applicable period of *Ineligibility* shall be eliminated.

[Comment to Rule 10.4: This Rule and Rule 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Rule 2.1.1) and have been warned against the possibility of supplement contamination); b) the Administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Rule 10.5 based on No Significant Fault or Negligence.]

77. Looking at the definition of "fault" from Appendix 1, I cannot find that there is No Fault. Specifically, the commentary to Rule 10.4 rules out the possibility of finding No Fault in instances where an athlete takes a mislabelled or contaminated supplement, as is the case here.

78. As a result, because this Tribunal accepts that the Athlete bears No Significant Fault or Negligence however finds that some level of fault must be attributed to the Athlete, the tribunal must assess the Athlete's degree of fault based on the *Cilic* test. Both parties agreed that the *Cilic* test is the appropriate test to apply in deciding on the level of fault. The *Cilic* test provides the following degrees of fault:

(a) Significant degree of or considerable fault: 16 – 24 months, with a "standard" significant fault leading to a suspension of 20 months.

(b) Normal degree of fault: 8 – 16 months, with a "standard" normal degree of fault leading to a suspension of 12 months.

(c) Light degree of fault: 0 – 8 months, with a "standard" light degree of fault leading to a suspension of 4 months.

Subjective and objective factors assist in determining the appropriate period of ineligibility.

(a) The objective element determines under which category a particular case falls. The objective element describes the conduct expected of a reasonable athlete in the Athlete's position.

(b) The subjective element may be applied to move the particular athlete's sanction up or down within a category of fault. The subjective element describes what ought to be expected from this particular Athlete, in light of her personal capacities.

79. According to *Cilic*, the objective element of the level of fault can be understood as such:

> 74. […] At the outset, it is important to recognize that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.
>
> 75. However, an athlete cannot be reasonably expected to follow all of the above steps in every and all circumstances. Instead, these steps can only be regarded as reasonable in certain circumstances:
>
> > a. For substances that are prohibited at all times (both in and out-of-competition), the above steps are appropriate, because these products are particularly likely to distort competition […] As a result, an athlete must be particularly diligent and, thus, the full scale of duty of care designed to prevent the athlete from ingesting these substances must apply.

80. I find that the Athlete conducted herself in a manner showing a normal degree of fault. While she read the label, cross-checked the ingredients on the label with those substances found on the WADA Prohibited List and ensured that the product was reliably sourced, she did not consult any appropriate experts (e.g. a doctor, coach, dietician or CCES representative) before consuming the product.

81. In 2018, athletes cannot claim complete ignorance of the risks of doping. Athletes ought to know that supplements carry a likelihood of being tainted. For this reason, I find that based on the objective standard, the Athlete's degree of fault is normal.

82. With regard to the subjective element, a Tribunal or adjudicator will look at: (i) an athlete's youth and/or inexperience; (ii) language or environmental problems; (iii) the extent of the anti-doping education received by the athlete; (iv) any other personal impairments (*Cilic* at para 76).

83. While it was submitted that English is not the Athlete's first language, I am unsympathetic to that argument. The Athlete is proficient enough to study in the English language at UFV and appeared to be fluent while giving her testimony. I do not find that language played any role that could mitigate the length of her ineligibility. I was also presented with no evidence of a personal impairment that could have been taken into consideration.

84. I find, however, that the Athlete, as a 19-year-old athlete with little experience in doping and the limited anti-doping education she received are facts that should be given consideration.

85. As a result, I find that the Athlete has conducted herself in a manner showing standard normal fault.

Decision

86. Regarding the three issues I decide as follows:

a. The Athlete's ADRV was unintentional;
b. The ADRV was not the result of significant fault or negligence;
c. The degree of fault is standard normal;

Order

87. The request by Ms. Godinez for a sanction reduction is granted. I order that the period of ineligibility be of 12 months and that it begin on the date of the sample collection (February 9, 2018) or the day after the Athlete last competed.

Signed in Ottawa, this 6th day of September, 2018.

David Bennett, Arbitrator