No. DT 18-0303

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE REGLEMENT DES DIFFERENDS SPORTIFS DU CANADA (CRDSC)

DOPING TRIBUNAL

IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT AGAINST DAWSON ODEI:

CANADIAN CENTRE FOR ETHICS IN SPORT
U SPORTS

Claimants

-and-

DAWSON ODEI

Respondent

BEFORE:

Peter Lawless (Arbitrator)

APPEARANCES & ATTENDANCES

On behalf of the Athlete:	Dawson Odei Michael Smith (Counsel)
On behalf of CCES:	Matthew Koop Adam Klevinas (Counsel)
On behalf of U Sports:	Tara Hahto
On behalf of SDRCC:	Alexandra Lojen (Case Manager)

Neither WADA nor the Government of Canada participated in this hearing.

DECISION

OVERVIEW

1. On November 3, 2018, the Athlete provided an In-Competition sample of both his blood and his urine. After testing, both the "A" and the "B" urine samples returned an Adverse Analytical Finding for dehydrochlormethyltestosterone, a non-Specified Substance also known as Turinabol.

2. A provisional suspension was imposed on the Athlete on December 12, 2018.

3. On a form dated March 6, 2019, the Athlete submitted to the CCES a Timely Admission Form admitting the Anti-Doping Rule Violation (ADRV).

4. The CCES says that in the circumstances of this matter a four year suspension is appropriate.

5. The Athlete does not agree and seeks a significant reduction in the period of suspension.

THE PARTIES

Dawson Odei

6. The Athlete is a student at the University of Ottawa and is the captain of the Gee-Gee's football team.

The Canadian Centre for Ethics in Sport (CCES)

7. CCES is a not-for-profit corporation responsible for administering the Canadian Anti-Doping Program (CADP) and for ensuring that the CADP remains compliant with the World Anti-Doping Code.

WITNESSES

8. The Athlete, in addition to giving evidence himself, called one witness, Mr. Marshall Odei, his older brother, to give evidence at the hearing.

9. Marshall Odei formerly played university football while attending St. Mary's University where he completed three years of studies. Since November of 2016, he has been involved in competitive bodybuilding.

PROCEDURE

10. The hearing was conducted in person in Ottawa, Ontario, on August 23, 2019.

ISSUE

11. The issue before the Tribunal, in light of the acknowledgement of the ADRV, is to determine the appropriate consequences to be imposed on the Athlete for the ADRV, including what period of Ineligibility the Athlete must serve.

POSITION OF THE PARTIES

CCES' Position

12. The CCES, in its submissions takes, effectively, three alternative positions. Its first position is that the ADRV was intentional and, accordingly, pursuant to Rule 10.2.1.1 of the CADP, the appropriate sanction is a four-year period of ineligibility.

13. Second, the CCES says that if the Tribunal finds the ADRV was not committed with either direct or indirect intent, there are no circumstances to allow for any further reduction from the two-year period of ineligibility set out in Rule 10.2.2 of the CADP.

14. Lastly, the CCES says that if the Tribunal accepts that the Athlete bears No Significant Fault or Negligence, that his degree of fault falls on the upper end of the range and seeks the imposition of a period of Ineligibility of between 20 to 24 months.

The Athlete's Position

15. Unsurprisingly, the Athlete's position is quite different on each of the above positions taken by CCES.

16. The Athlete says that the ADRV was unintentional and that the circumstances demonstrate that he bears No Significant Fault of Negligence for the ADRV and that, in evaluating his degree of Fault, the Tribunal should establish it as the lowest end of the range, submitting that a period of Ineligibility of between 12 and 16 months is appropriate.

THE BURDEN AND STANDARD OF PROOF

17. The CADP provides that it is the Athlete who bears the burden of establishing that the ADRV was unintentional. The CADP further provides that the Athlete also has the burden of establishing that he bears No Significant Fault or Negligence.

18. Rule 3.1 of the CADP says that:

> *"[…] Where the Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability."*

ANALYSIS

19. The evidence given by the Athlete was composed and credible. Although tested under cross-examination, his evidence remained unshaken.

20. The Athlete says that on October 4, 2018, some weeks prior to the in-competition test which resulted in the ADRV, he played another sanctioned football game, this one against the University of Toronto. In this game, as is typical for the position he plays, he sustained a number of hits, particularly to his knees.

21. Also in attendance at this game were members of his girlfriend's family. After the game they gave him a ride to his family home in Whitby, Ontario, where he arrived at approximately 11:30pm.

22. Living in the family home are his father and, in a bachelor suite downstairs, his brother, Marshall Odei.

23. The Athlete's evidence, which I accept, is that on the drive to the family home his knee became troublesome and he felt the need, again as is typical for him, to take an anti-inflammatory but that he did not have any.

24. Upon arriving at the family home he spoke to his father and also walked around the home to see how everything looked. His brother was not home as he was working. The Athlete's evidence was that he only gets home once or twice a year and he was curious to see what, if any, changes had been made to the home.

25. The Athlete further testified that he knew his brother was a competitive bodybuilder and anticipated that, as such, his brother would likely have ibuprofen available.

26. The Athlete then went down the stairs into his brother's bachelor apartment and upon entering the main living area saw on a shelf a range of products including pre-workout supplements and a bottle of what he thought was ibuprofen. He then took some ibuprofen and headed back upstairs.

27. A short time later, his brother Marshall came home, bringing his new (to the Athlete) girlfriend to whom he was introduced. As it was now around midnight the family went to their beds for the night.

28. The next day, the Athlete returned to Ottawa and thought no more about the ibuprofen.

29. Some weeks later, he was called to a meeting with his Assistant Athletic Director who advised the Athlete that the sample he provided on November 3, 2018, contained a banned substance.

30. I accept the Athlete's evidence that he was in shock at this news and that it felt surreal to him. He requested the B sample be tested and was, until the time the B sample also returned the same results, sure this was a mistake.

31. After the B sample confirmed the results, the Athlete sought out counsel who advised him that it was imperative that he figure out how this substance, Turinabol, got into his system.

32. As he was attempting to figure out how this happened, he was speaking with his girlfriend who suggested he speak to his brother who, given his athletic background, may have some advice on what to do.

33. The Athlete then called his brother Marshall and, in the course of that conversation after disclosing that he had tested positive, he asked his brother if he knew anything about Turinabol.

34. Marshall Odei, in his evidence, admitted that as part of his training as a competitive body builder he takes substances that are otherwise banned in many other sports. Specifically he gave evidence that he takes Turinabol and Anavar, both prohibited substances.

35. He further gave evidence that he had never previously indicated to the Athlete that he was taking prohibited substances.

36. He further testified that he stores the Turinabol in an ibuprofen container and the Anavar in an acetaminophen container.

37. His evidence, which I accept, is that he stores these products in this way so as to be discrete about his steroid use, and the topic of steroid use is simply not one he wishes to discuss.

38. Marshall Odei further testified that he no longer has any of the Turinabol that was in the ibuprofen bottle at the time his brother ingested it and that he has also subsequently thrown away the ibuprofen bottle itself.

Was the ADRV Unintentional?
Direct Intent

39. The present ADRV calls for a sanction of four years unless the Athlete can establish on a balance of probabilities that his ingestion of the Turinabol was not intentional.

40. In order to do this, the threshold issue is: can the Athlete establish how the prohibited substance came to be in his body, noting that in doing so it is not adequate to merely speculate as to the possible sources of the substance.

41. In CAS 2017/A/5016; CAS 2017/A/5036 (Abdelrahman v. EGY NADO; WADA v. Abdelrahman & EGY NADO),9 the Court of Arbitration for Sport held, at paragraph 125:

> *125. In this context, therefore, it is this Panel's opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268, 1 v. FIA; CAS 2014/A/3820, WADA v. Robinson and JADCO): unverified hypotheses are not sufficient (CAS 99/A/234-235, Meca-Medina v. FINA). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner.*

42. The crux of the CCES' submission on this point is that as the Athlete has not, and on the evidence, cannot provide pharmacological evidence to establish that the specific Turinabol contained in the ibuprofen bottle is consistent with the presence and quantity of dehydrochlormethyltestosterone in his sample, the Athlete cannot establish on a balance of probabilities how the substance entered his system.

43. In his reply submissions, the Athlete says:

> *6. The Athlete submits that it is not unreasonable that the original bottle of Turabolix and a sample of the pills are unavailable. It is reasonable for Marshal Odei to discard the bottle after having transferred the Turabolix into the Ibuprofen bottle. Additionally, the remainder of the pills were depleted before either Marshal or Dawson Odei became aware that a sample would be required.*

44. At paragraph 123 and 124 of Abdelrahman, supra, the Panel spoke to this as follows:

> *123. The Panel, indeed, observes that it could be de facto difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion". However, the Panel can envisage the possibility that it could be persuaded by an athlete's assertion of lack of intent, where it is sufficiently supported by all the circumstances and context of his or her case, even if, in the opinion of the majority of the Panel, such a situation may inevitably be extremely rare: where an athlete cannot prove source, it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.*
>
> *124. The foregoing, in fact, does not mean that the Athlete can simply plead his lack of intent without giving any convincing explanations, to prove, by a balance of probability, that he did not engage in a conduct which he knew constituted an anti- doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. The Panel repeats that the Athlete, even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the anti-doping rule violation and his behaviour, that specific circumstances exist disproving his intent to dope.*

45. In the present matter, the evidence relating to the source of the substance is not merely the assertion by the Athlete of a possible or theoretical explanation.

46. In the present matter, there is clear, cogent and credible evidence, which I accept, that Marshall Odei had purchased Turinabol for his personal use as a competitive bodybuilder.

47. Further, I accept his explanation for storing the Turinabol in an ibuprofen container; that it was meant to be discrete and to not advertise that he was taking prohibited substances.

48. CCES' submissions sought to emphasize the fact that the Athlete did not seek out ibuprofen from a "normal" location like a medicine cabinet in a bathroom.

49. I am not prepared to draw any negative inference from the fact that the Athlete was not looking in his brother's bathroom medicine cabinet.

50. The Athlete in his evidence credibly explained that when he went down the stairs and entered his brother's suite, the bookshelf containing a variety of vitamins and supplements, including the "ibuprofen", was clearly visible to him. Accordingly he had no need to search in the bathroom for what was plainly visible in front of him.

51. In my view the Athlete has managed to place himself into the "narrowest of corridors" and, as a result of the consistent and credible evidence of both the Athlete and his brother, I accept that he has established on a balance of probabilities that the source of the prohibited substance was his ingestion of what he thought was ibuprofen, from an ibuprofen bottle found plainly visible in his brother's suite in the family home, and that he did not have any intent to dope.

Indirect Intent

52. The CCES further argues that even if the Athlete did not directly intend to dope, the evidence shows that he acted with such recklessness as to constitute indirect intent leading to the same outcome as if he acted with intention.

53. In support of this, the CCES says that the specific pills ingested by the Athlete (assuming they look like the "replacement" pills purchased by his brother for the purpose of this hearing) look nothing like any of the commonly available pharmaceutical or generic ibuprofen tablets. They submit:

> *42. [...] the tablets do not appear anything like pharmaceutical or generic ibuprofen tablets, which are often brown/red, or come in blue gel capsules, and are marked with the dosage or identification. Any of the available white ibuprofen tablets clearly indicate on the tablet that they are either Advil or Motrin and appear to have a smooth or polished texture as opposed to a rough or unfinished texture.*
>
> *43. The CCES' position in this regard is supported by the Affidavit provided by Mr. Kevin Bean, Senior Manager, CADP, enclosed as Exhibit 12, and the photos of Advil generic ibuprofen available in Canada (enclosed as Exhibits 13-20).*

54. I reject this submission.

55. The evidence submitted by the CCES establishes that, when it comes to ibuprofen, it is available in many shapes, colours and forms. I also note that the evidence submitted, being photographs, does not allow me to conclude there is any variation or difference in the textures of the white ibuprofen or Turinabol.

56. I accept that the white pills consumed by the Athlete, despite not having a brand name such as Advil or Motrin marked on them, look sufficiently like ibuprofen, most particularly when coming

out of a normally marked ibuprofen bottle, that the athlete was not reckless in his consumption of them.

57. I do not accept CCES' contention that knowing that his brother was a bodybuilder ought to, in and of itself, made the risk of taking what he thought was ibuprofen from his brother reckless to the point the Tribunal should find it constitutes indirect intent.

58. The Athlete testified that, prior to this matter arising, he was unaware that his brother took prohibited substances despite knowing he was a competitive bodybuilder. This evidence was supported by his brother's evidence that he didn't talk about his use of prohibited substances, which itself is further supported by his conduct in concealing the two prohibited substances he did take in otherwise innocuous bottles of ibuprofen and acetaminophen.

59. Recalling the standard of proof the Athlete needs to meet, I find that, on a balance of probabilities, the Athlete's conduct in consuming the two pills from an ibuprofen bottle plainly visible in his brother's suite was not sufficiently reckless as to be akin to him running into a minefield ignoring all stop signs along his way (see: Querimaj v. IWF, CAS 2012/A/2822 at para 8.14.)

60. Having found on a balance of probabilities that the Athlete has established the source of the prohibited substance and that he acted with neither the direct nor the indirect intent to dope, the available period of Ineligibility may be reduced from four to two years.

Was the ADRV the Result of Significant Fault or Negligence?

61. As a result of the above findings, the analysis now turns to a determination as to whether or not the Athlete can demonstrate there exists exceptional circumstances such that his sanction may be further reduced in accordance with Article 10.5.2 of the CADP. That is to say the Athlete has the opportunity to demonstrate that his degree of Fault or negligence was not significant in relation to the ADRV.

62. The CCES cites three CAS decisions (CAS OG 04/003 Edwards v. IAAF and USATF, paras. 5.11; CAS 2006/A/1032 Karatancheva v. ITF, paras. 146 ff; and CAS 2006/A/1067 Keyter v. IRB, paras. 6.13) for the proposition that:

> *51. In principle, if an Athlete takes a product but fails to determine or inquire whether the product contains a Prohibited Substance, this would preclude any reduction of the Athlete's period of Ineligibility on the basis of No Significant Fault or Negligence.*

63. The CCES argues that:

> *53. Immediately upon noticing that the tablets allegedly found in his brother's ibuprofen bottle looked nothing like commonly available ibuprofen tablets and had no markings that indicated that they could be ibuprofen, the Athlete, knowing that he is subject to Doping Control, should have either consulted with his brother to ascertain what the pills really were before taking them or he should have refrained entirely from ingesting them and he should have sought an alternative*

and more reliable source of ibuprofen (i.e., pills that were actually marked as ibuprofen or Advil).

64. For substantially the same reasons set out above, resulting in the determination that the ADRV was not intentional, I reject the CCES submissions on this point.

65. I find that the Athlete exercised sufficient and reasonable care in consuming two white, albeit unmarked, pills from what he recognized as a regular commercially available bottle of ibuprofen, without taking further steps beyond recognizing the bottle as a commercially available bottle purporting to contain ibuprofen, and seeing that the pills contained within looked to him like ibuprofen.

66. Accordingly I find, on a balance of probabilities, the Athlete has demonstrated that he bears No Significant Fault or Negligence and that his period of Ineligibility may be further reduced from the initial two years based on his degree of Fault.

What is the Degree of Fault of the Athlete?

67. In accordance with Rule 10.2.2 of the CADP the period of Ineligibility applicable to an unintentional ADRV for a non-Specified Substance is two years.

68. Further, for cases of unintentional ADRVs involving non-Specified Substance such as dehydrochlormethyltestosterone, the provisions of Rule 10.5.2 apply and allow for a further reduction in the period of Ineligibility.

> *10.5.2 Application of No Significant Fault or Negligence Beyond the Application of Rule 10.5.1*
>
> *If an Athlete or other Person establishes in an individual case where Rule 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Rule 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Rule may be no less than eight years.*

69. Accordingly the Athlete's period of ineligibility will fall between a minimum of 12 months (being one half of the period of Ineligibility provided for in Article 10.2.2) and the maximum of 24 months depending on his degree of Fault.

70. The CADP defines Fault as follows:

> *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.

71. The parties agree that further guidance on how to evaluate the Athlete's degree of Fault may be taken from the 2013 CAS decision in Marin Cilic v. ITF CAS 2013/A/3327.

72. In Cilic, the Tribunal articulated three degrees of Fault: light, normal and significant, and specified that a "standard" degree of Fault in each would lead to a sanction in the midpoint of the applicable range.

73. The Parties agree that, in the present matter, these three degrees of fault translate to the following sanction ranges:
    a. Light - between 12 and 16 months;
    b. Normal: between 16 and 20 months; and
    c. Significant: between 20 and 24 months.

74. Further extrapolation from Cilic suggests that the "standard" degree of Fault in each of Light, Normal and Significant in this matter will give rise to the following sanctions:
    a. Light - 14 months;
    b. Normal - 18 months; and
    c. Significant - 22 months.

75. In Cilic, CAS calls for an examination of both subjective and objective factors to determine which of the three degrees of Fault a particular athlete bears. The objective factors determine which one of Light, Normal or Significant Fault is the appropriate degree of Fault, and subjective considerations allow for variations from the otherwise "standard" period of ineligibility for each degree of Fault.

76. In the present matter, the Athlete says he bears a Light degree of Fault and asks for a sanction between 12 and 16 months of Ineligibility.

77. The CCES argues that, if the Tribunal finds the Athlete has brought himself within the scope of the No Significant Fault or Negligence regime (which they say he has not), then he bears a Significant degree of Fault and asks for a sanction of between 20 and 24 months of Ineligibility.

78. In Cilic, the Tribunal notes that, before deciding to ingest a product, the objective steps an athlete can take to avoid consuming a prohibited substance are:
    a. To read the product's label or otherwise determine the product's ingredients;
    b. Cross check the ingredients against the prohibited list;
    c. Do an internet search of the product;
    d. Only consume products from a reliable source; and

e. Ensure they have consulted appropriate experts about the specific product and the restrictions athlete's face.

79. The Tribunal in Cilic sets out that subjective considerations include:
    a. The athlete's age and experience;
    b. Any language or environmental problems encountered by the athlete;
    c. The extent of anti-doping education undertaken or available to the athlete;
    d. Any explanations for the athlete taking a reduced standard of care as a result of circumstances such as:
        i. Long term unproblematic use of a particular product;
        ii. Having previously followed the objective steps for a particular product;
        iii. The athlete experiencing a high degree of stress;
        iv. A careless but understandable mistake.

80. In addressing the question of Fault, the CCES points to what it says is the high degree of risk that should have been perceived by the Athlete noting:

> *80. In the present matter, for the following reasons, the Athlete should have perceived a reasonably high degree of risk when he proceeded to ingest the tablets from his brother's room on October 6, 2018:*
>
> *- He sought ibuprofen from an unreliable source (i.e., his brother's bedroom as opposed to a medicine cabinet, bathroom, directly from a pharmacy, or from his team's support staff);*
>
> *- His brother is involved in bodybuilding, a sport that is known to have doping issues, and he keeps a number of different products in his room, where the Athlete was allegedly seeking ibuprofen; and*
>
> *- The tablets allegedly inside the ibuprofen container bore no resemblance to commonly available ibuprofen.*

81. I do not view his brother's bedroom as a particularly unreliable source.

82. The only one of the above reasons that I find has merit is that the Athlete, knowing his brother was involved in competitive bodybuilding, should have had a heightened perception of risk in general. However, given his evidence, which I have accepted, that he consumed two white pills consistent with ibuprofen from a bottle of ibuprofen, I find that, to the degree he needed to exercise heightened caution, he did so.

83. The CCES further suggests, at paragraph 82 of its submissions that:

> *82. The minimum investigative steps that the Athlete could have taken are the five objective factors listed in paragraph 74 of Cilic; however, the Athlete did not ascertain the ingredients of the Turabolix tablets, he did not cross-check the actual ingredients of Turabolix against the Prohibited List, and he did not conduct an internet search of Turabolix. Further, the CCES considers that the Athlete placed undue reliance on the source of the ibuprofen tablets (i.e., his brother) and*

on his past use of ibuprofen as a justification to think that a product that appeared entirely different from commonly available ibuprofen was safe to use.

84. I do not agree.

85. The fact is the Athlete had absolutely no reason to believe he was about to ingest Turinabol. He intended to take two ibuprofen and thought he was doing so. He had absolutely no reason to take any of these enumerated steps as they relate to Turinabol.

86. Arguably, as the Athlete believed he was about to ingest ibuprofen he ought to have taken the steps enumerated by the CCES as they relate to ibuprofen.

87. In his submissions the Athlete says:

> *35. Mr. Odei inspected the bottle and found it to be appropriately labelled. A reasonable person would not suspect that a bottle containing an ibuprofen label would actually contain a substance other than what was properly on the label.*
>
> *[...]*
>
> *37. The Athlete submits that within the determination of objective fault, significant consideration must be given to the label of the bottle. Mr. Odei read the label and was familiar with the product. It is not unreasonable for Mr. Odei to ingest the substance without an in-depth investigation as to the content of the labeled container.*

88. I agree with the Athlete. I find that no particularly heightened Fault arises from his failure to do a more fulsome investigation, given the nearly complete lack of "red flags" when presented with a bottle of what appeared to be ibuprofen in an ibuprofen container.

89. It is also helpful to keep in mind that, in imposing any sanction, a Tribunal must be careful to try to ensure that cases with similar facts result in similar outcomes.

90. To assist with this, both Parties have drawn to my attention the case of UKAD v. Turley, NADP 909/2017. The CCES summarized it as follows:

> *89. In UKAD v. Turley, a boxer was visiting his grandparents' house and wanted to take some ibuprofen to help relieve the pain he was experiencing in his knuckles from sparring. He told his grandfather that he was going to go to the pharmacist to buy some ibuprofen, but his grandfather told him that he had some in his medicine cabinet, where he kept his other medications. At the time, the boxer's grandfather was taking a medication that contained furosemide – a Prohibited Substance – for hypertension. According to the grandfather, he had inadvertently put a furosemide blister pack into an ibuprofen packet.*
>
> *90. The National Anti-Doping Panel ("NADP") accepted the boxer's explanation and imposed a period of Ineligibility of 12 months, which is 50% of the*

otherwise applicable period of Ineligibility and would constitute a normal degree of Fault on the basis of Cilic.

[...]

92. In coming to its conclusion in Turley, the NADP, when considering the significance of the boxer's culpability, considered:

- That any athlete has a core responsibility for what they ingest and that they need to be vigilant against the possibility that, even inadvertently, they may breach anti-doping rules in such a way that allows them to obtain a competitive advantage over others (para. 26);

- There was no doubt that the boxer was at fault for his 'thoughtless consumption' of his grandfather's furosemide simply because he found it inside an ibuprofen packet. The nature of the pills was clearly stamped on the blister pack and the pack would not have fit comfortably within the shape of an ibuprofen packet (para. 27);

- The boxer was not acting deliberately but he was inattentive (although he was under stress because his grandfather wanted him to stay at the house with his dying grandmother instead of going to the pharmacy). His error was understandable but not fully excusable and his thoughtlessness could be powerfully criticized (para. 28); and

- The result of the boxer's thoughtfulness must be marked by an appreciable period of Ineligibility (para. 29).

91. The CCES specifies why they say that Mr. Odei's degree of Fault is greater than that of Mr. Turley at paragraph 94 of their submissions as follows:

- Mr. Turley sought ibuprofen from a medicine cabinet – where one would reasonably expect to find such a product – and at the direction of his grandfather who knew that there was ibuprofen in his medicine cabinet, whereas the Athlete allegedly sought ibuprofen from his brother's room, where he kept other products used for bodybuilding, and on his own accord (i.e., without being reliably told that he could find ibuprofen there);

- Both Mr. Turley and the Athlete (allegedly) 'thoughtlessly consumed' what they believed to be ibuprofen just because it was in an ibuprofen packet;

- The Athlete consumed dehydrochlormethyltestosterone, a powerful anabolic steroid used notably by the East Germans and, more recently, Russian athletics and weightlifting athletes. This substance has known performance-enhancing properties and would have provided the Athlete with a competitive advantage; and

- The appearance of the tablets allegedly consumed by the Athlete bear no resemblance to the ibuprofen commonly available in Canada, which should have heightened his vigilance and risk awareness, whereas the ibuprofen tablets consumed by Mr. Turley – even if they came from a blister packet that clearly indicated that they were furosemide – more closely resembled actual ibuprofen with respect to their shape and colour.

92. In contrast to CCES' position, the Athlete suggests that his degree of Fault is lesser than that of Turley. He submits:

> *26. The Tribunal stated at paragraph 27 that 1) the packet would not have fitted comfortably within the shape of an ibuprofen packet, and 2) that the state of the grandparents' medicine box cried out for particular care in the selection of the pills.*
>
> *In the present case, there was nothing about the location of the bottle or the storage of the pills within the bottle that would have drawn any added attention to the pills. Additionally, the storage of the bottle within Marshall Odei's room is not of concern as it was known that he stored medication in his room, as it would be known that medication could be found in a medicine cabinet.*

93. With respect to both the CCES and the Athlete, I find that they are both seeking to draw a distinction that does not exist.

94. While this is most certainly not a mathematical exercise where you add up the negative facts and then see how many there are before determining fault, in Turley. there are two specific facts that ought to have caused the athlete to proceed more cautiously - the state of the medicine box and the misfitted blister pack in the ibuprofen package.

95. In the present matter, there are also two factors that ought to have caused the Athlete to proceed more cautiously - the fact that his brother was a competitive bodybuilder and the lack of typical brand markings on the white pills in the ibuprofen container.

96. I find that an examination of the Fault of the Athlete in the present matter and of Mr. Turley to be similar enough that I am unable to conclude the degree of Fault is any different.

97. In Turley, the Tribunal, having reference to the Cilic factors, concluded Mr. Turley bore a normal degree of Fault.

98. In the present matter, also having regard to the Cilic factors as well as their application in Turley, I find the Athlete also bears a normal degree of Fault.

99. I further find no evidence to suggest that the appropriate sanction should be anything other than what the standard sanction should be (being the mid-point in the range for the particular degree of Fault).

100. As noted in paragraph 73(b) above, for a standard sanction and a normal degree of Fault the appropriate period of ineligibility should be set at 18 months.

DECISION

101. Having carefully considered all of the evidence and the submissions of the parties, I find on a balance of probabilities that the Athlete, in committing an anti-doping rule violation, did not do so with either direct or indirect intent.

102. I further find that he has established on a balance of probabilities that the source of the dehydrochlormethyltestosterone was the unmarked white pills ingested by the Athlete from the ibuprofen container found in his brother's suite in the family home.

103. I find that the Athlete exercised sufficient and reasonable care in consuming two white, albeit unmarked, pills from what he recognized as a regular commercially available bottle of ibuprofen, without taking further steps beyond recognizing the bottle as a commercially available bottle purporting to contain ibuprofen and seeing that the pills contained within looked to him like ibuprofen.

104. Accordingly, I find, on a balance of probabilities, that the Athlete has demonstrated that he bears No Significant Fault or Negligence and that his period of Ineligibility be further reduced from the initial two years based on his degree of Fault.

105. Lastly, in determining the Athlete's degree of Fault, using the guidance found in Cilic and the analogous case of Turley, I find that the Athlete bears a Normal degree of Fault and that a standard sanction for that degree of fault for a non-Specified Substance of an 18-month period of ineligibility is appropriate.

106. The CCES submits that the period of Ineligibility should commence as of the date of this decision, and that he should be credited with the time he has already been ineligible as a result of the imposition of the Provisional Suspension by the CCES on December 12, 2018.

107. The Athlete did not oppose this in his submissions.

108. I agree with the CCES that, absent evidence of a timely admission pursuant to the CADP, the period of ineligibility should commence as of the date of the Tribunal's decision, but that the Athlete is to be credited with any time serving a provisional suspension as was imposed in this case on December 12, 2018.

ORDER

109. The Request by Mr. Odei for a reduction in sanction is granted and a sanction of 18 months of ineligibility is imposed on him, as of the date of this decision, with credit granted for the time served while provisionally suspended since December 12, 2018.

Signed in Victoria, BC this 28th day of August 2019.

Peter Lawless, Arbitrator