

**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 ALISHA GEIER

:

CANADIAN CENTRE FOR ETHICS IN SPORT
U SPORTS

Claimants

-and-

ALISHA GEIER

Respondent

BEFORE:

Peter Lawless (Arbitrator)

APPEARANCES & ATTENDANCES

On behalf of the Athlete: Alisha Geier
Hugh Meighen (Counsel)

On behalf of CCES: Kevin Bean
Adam Klevinas (Counsel)

On behalf of U Sports: Tara Hahto

On behalf of SDRCC: Jérôme Fontaine-Benedetti (Assistant Case Manager)
Maude Trevisan (Assistant Case Manager)

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

DECISION

OVERVIEW

1. On October 1, 2021, following an inter-collegiate match, Alisha Geier (the “Athlete”) was selected for in-competition doping control and provided a urine sample to the Canadian Centre for Ethics in Sport (CCES).
2. On November 3, 2021, the Athlete received notification that the sample she provided returned an adverse analytical finding (AAF) for cathine, which is classified as a specified substance (above a certain limit) on the 2021 World Anti-Doping Agency (WADA) Prohibited List (Prohibited List). The Athlete subsequently received a notice of charge for levels of cathine above the adjusted decision limit.
3. The Athlete does not contest that she has committed an anti-doping rule violation (ADRV) pursuant to the Canadian Anti-Doping Program (CADP) Rules 2.1 (Presence in Sample) and 2.2 (Use or Attempted Use).
4. On November 8, 2021, the Athlete accepted and signed a voluntary provisional suspension.
5. On the same day, the Athlete provided an additional statement, which stated as follows:

I had no intention of violating any drug restrictions and did so unknowingly. I have now realized that the presence of cathine and pseudoephedrine in my sample was a result of me taking Buckley’s Complete for cough, cold and flu. At the time of taking them I was unaware that they were on the prohibited list and it had not crossed my mind to check. Unfortunately, I had not been feeling well the week leading up to that game. I took two Buckley’s pills hoping it would help me feel a little better before the game. This was an honest mistake and would never deliberately take any substances to enhance my performance. I am embarrassed and humiliated by the circumstances that have led to this outcome. I am disappointed in myself for letting this happen and not doing my due diligence to ensure I was following the CCES doping guidelines. I have always strived to play sport with honesty and the most integrity possible.

6. On November 17, 2021, the Athlete received a formal Notice of Charge under CADP Rule 7.2 (Notice of Charge), informing her of the assertion by the CCES that she had committed an anti-doping rule violation pursuant to CADP Rules 2.1 (Presence in Sample) and 2.2 (Use or Attempted Use).
7. The Athlete does not contest that she has committed the anti-doping rule violation as asserted by the CCES.
8. In the Notice of Charge, the CCES proposed a sanction of ineligibility for a period of two (2) years, plus all other appropriate consequences.
9. The Athlete does not agree and on December 6, 2021 requested a hearing to contest the default sanction on the basis that the Athlete does not bear significant fault in the mistaken ingestion of pseudoephedrine that led to the excess levels of cathine and seeking a significant reduction in the period of suspension.

THE PARTIES

Alisha Geier

10. The Athlete is a 23-year old university student studying at Wilfrid Laurier University (Laurier) in Waterloo, Ontario, Canada. Since fall of 2016, she has been a member of the second-tier women's rugby team at Laurier. In the 2021 season, the Athlete was selected by her coaching staff and teammates to serve as the team captain.
11. The Athlete is a student participating only in university level sport. She is not a National Level Athlete and is not (and has never been) included in any sport's National Athlete Pool (NAP).

The Canadian Centre for Ethics in Sport (CCES)

12. 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

13. The Athlete testified on her own behalf and Kevin Bean testified on behalf of the CCES.

PROCEDURE

14. The hearing was conducted by video conference on April 29, 2022.

ISSUE

15. 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

16. The parties agree on almost everything relevant to this proceeding and have very helpfully filed an Agreed Statement of Facts.
17. The parties agree that the Athlete has proven how the Cathine entered her body and further that she bears No Significant Fault or Negligence and that her fault is not significant in relation to the ADRV.
18. The parties further agree that the starting date for any period of ineligibility should be the sample collection date of October 1, 2021.
19. While relying on the same basic methodology - applying the test from *Marin Cilic v. International Tennis Federation CAS 2013/A/3327 ("Cilic")* - where the parties differ is on what they each say is the appropriate sanction given the agreed facts and the *Cilic* methodology.

CCES' Position

20. The CCES says that applying the test in *Cilic*, the Athlete's fault is in the normal range after applying the objective factors (leading to a range of sanction of between 8 and 16 months) and that within that range her subjective fault suggests that she is on the lower end of that range.
21. The CCES does not seek a specific sanction and instead submits that it is for the Tribunal to select where in that lower range the sanction should fall.

The Athlete's Position

22. The Athlete's position is also reached with reference to the test from *Cilic* but reaches a different conclusion than the CCES.
23. The Athlete says that, after looking at the objective and subjective factors, her fault lies at the lower end of the Light range of sanction, leaving it to the Tribunal to specify where within a range of 0 to 5 months ineligibility is appropriate.

ANALYSIS

24. Fault is defined in the Appendix 1 of the CADP and is typically assessed at one of three degrees: light, normal, and considerable.
25. Each degree of fault carries a corresponding sanction range with the "standard" level of fault in each category set as the midpoint of each sanction range, allowing the sanction to be moved either "up" or "down" depending on the particular circumstances of the case.
26. The sanction ranges and "standard" sanction for each range is as follows:
 - a. Significant degree of fault: 16-24 months, with a "standard" sanction of 20 months.
 - b. Normal degree of fault: 8-16 months, with a "standard" sanction of 12 months.
 - c. Light degree of fault: 0-8 months, with a "standard" sanction of 4 months.
27. In seeking to establish where an athlete falls within these degrees of fault and the range found within each degree the parties agree it is appropriate to apply the methodology found in *Cilic*.

71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.

72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.

73. The subjective element can then be used to move a particular athlete up or down within that category.

28. However this matter is made more challenging as the test found in *Cilic* cannot be precisely applied to the Athlete. The CCES speaks to this in their written submissions at para. 20:

20. This is a case where Cathine (a S6.b Stimulant) is only prohibited In-Competition. Use of Buckley's in the days or weeks prior to a competition is not banned. In this case, the two discrete scenarios described in Cilic at paragraph 75 b. for substances banned only In-Competition (like Cathine), either (i) used In-Competition or (ii) used only Out-Of-Competition leading to an AAF from an In-Competition test, are blurred.

29. I find it is appropriate in these circumstances to evaluate the objective and subjective factors from *Cilic* and after doing so, examine any conclusions in light of this "blurring" to determine if any further adjustments must be made.

30. 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.

31. In her own submissions the Athlete agrees that she did not follow all of the objective steps:

22. With respect to objective factors (a)-(c), the Medication was leftover from a prior bout of the flu and was no longer in the packaging. At the time of ingesting the Medication, the Athlete did not think to research the product's ingredients, cross-check them against the Prohibited List, or do an internet search of the product.

32. The product at issue was, however, obtained from a pharmacy which is a reliable source.

33. In the present matter, having regard to the agreed facts and the objective *Cilic* factors, I agree with the CCES that the Athlete bears a normal degree of fault.

34. At its simplest the Athlete failed to take almost any step to determine what, if any, risks were associated with taking the Buckley's Complete. She, perhaps understandably, simply took a product she had taken in the past for relief of her cold or flu symptoms. However it cannot be said that her objective fault is less than normal.

35. Having reviewed the objective factors, it is then appropriate to look at the subjective factors from *Cilic* to see where the specific sanction should be found.

36. 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.

37. The CCES speaks to these factors as follows:

26. CCES says that the following subjective factors mitigate the Athlete's 'normal' degree of Fault:

a. Her age and experience: While the Athlete does not enjoy any special status in the CADP with regard to the sanction calculation calculus, she is a relatively young person who does not participate in elite level sport and has never done so. The Athlete has only been involved with U SPORTS Rugby activities. The definition of Fault in the CADP demands an evaluation of any "departure from the expected standard of behaviour" (emphasis added). The CCES says that the standard of behaviour expected of a U SPORTS athlete is less than the standard of behaviour expected from an elite level athlete – although both will be subject to the rigors of the CADP.

b. The Athlete had previously taken the Buckley's to treat similar symptoms. Greater care is required when taking any product for the first time or when taking a dietary supplement product - with all the risk and uncertainty of supplementation that athletes have been repeatedly warned against.

c. The athlete was feeling unwell on October 1, 2021, and on previous days. Her illness made her careless and reduced her awareness of risk. Her mistake was to use a product that she had previously used to treat similar symptoms, without thinking to review the packaging label to confirm the contents and to identify all active ingredients. Had she done so, the pseudoephedrine was clearly listed.

d. The athlete did not have access to a dedicated 'entourage' at her university to provide her with specialized health care and/or anti-doping advice and direction.

38. I accept the CCES' characterization of these subjective factors as mitigating the Athlete's fault and moving it to the lower end of the range for the Normal category.

39. The CCES however also sets out two factors which they say aggravate the Athlete's Fault.

27. The CCES says that the following subjective factors aggravate the Athlete's degree of Fault:

a. The Athlete was repeatedly educated regarding the risk that pseudoephedrine was often found in common over-the-counter products. She was informed how to check the composition of all products she consumed to avoid ingesting prohibited substances. The Athlete took the Buckley's with no investigation whatsoever regarding its contents.

b. The Buckley's was not listed on the Doping Control Form. This is suggestive either that (i) the Athlete was trying to hide her use of the Buckley's or (ii) the Athlete was completely unaware that Buckley's was a product that should have been on her risk assessment 'radar'.

40. I draw no conclusion about the absence of the Buckley's on the doping control form. I assess that as neutral as it speaks more to an athlete's ability to establish the cause of an AAF rather than any risk assessment.
41. However, I do differ in view with CCES as to the degree of fault given the Athlete's doping education.
42. I accept that the Athlete was repeatedly educated on the risk of pseudoephedrine. However, the Athlete did not return an AAF for pseudoephedrine – quite the contrary, her levels of pseudoephedrine were absolutely within the established limit.
43. In this case the AAF is for cathine, a metabolite of pseudoephedrine, and her antidoping education must be evaluated in terms of that substance and what following the education provided could have shown her about the Buckley's Complete in regard to cathine.
44. A search of the Global DRO would have disclosed that Buckley's Complete was banned in competition but not out of competition.
45. However it is not quite that clear as the Global DRO makes no mention of cathine at all but only references pseudoephedrine and, importantly, notes that "pseudoephedrine is prohibited when the urinary concentration exceeds 150 microgram/mL."
46. The Athlete did not exceed the established limit for pseudoephedrine.
47. It also notes that "[f]urther information can be found from WADA : https://www.wada-ama.org/sites/default/files/resources/files/WADA_Additional_Info_Pseudoephedrine_2010_EN.pdf " (the "Further Information").
48. Leaving aside the appropriateness of any athlete let alone an athlete playing lower-level university rugby having to navigate through multiple websites, none of which mention the actual substance cathine, even if an athlete reviews the Further Information what they would learn is not so clear as to be determinative.
49. By reviewing the Further Information, an athlete would learn first that it is recommended to stop taking pseudoephedrine (PSE) pills at least 24 hours before competition.
50. That does not end the inquiry. Having gone so far as to review the Further Information, an athlete would also learn that:

The threshold level has been established based on the intake of therapeutic doses of PSE, defined as a maximum daily dose of 240mg PSE taken either as:

- i) four (4) daily administrations (one every 4-6 hours) of a 60mg pill (or 2 x 30mg pills), or*
- ii) two (2) daily administrations (one every 12 hours) of a 120mg pill (extended release), or iii) one (1) daily administration of a 240mg pill (extended release).*

In line with this dosing regimen, the intake, for example, of a single daily dose of 3 x 60mg pills constitutes a suprathreshold administration that may lead to an Adverse Analytical Finding.

51. A reasonable inference to draw from the plain language of this further information is that while it is best to stop taking PSE pills 24 hours before competition you may still take some of the medication as long as you stay below the above dosing regimen.
52. This is consistent with existence of a threshold for pseudoephedrine in competition as set out in the Global DRO.
53. It further bears remembering that in this matter the Athlete took just two of the Buckley's Complete pills, within the parameters set out in the dosage information found in the Further Information.
54. Regardless, none of the above gives any indication to an athlete that they are at risk of an AAF for cathine.
55. A copy of the True Sport Clean Review course completed by the Athlete is also provided in the evidence of CCES.
56. As part of that course, an athlete is given the specific example of pseudoephedrine and walked through the steps to be taken including reviewing in the Global DRO to determine the status of the substance.
57. After searching the Global DRO and possibly even going beyond the Global DRO to the "further information" referenced above, the athlete would be asked a question as to the status of the pseudoephedrine. The correct answer is that pseudoephedrine is "prohibited in competition for concentrations greater than a certain threshold".
58. Once again the Athlete is being specifically taught that it is an acceptable substance up to a certain level.
59. And once again there is no mention of cathine.
60. What then does the CCES advise? If an athlete correctly answers the question about the substance's status they are told:

Correct!

Pseudoephedrine, which is present in many over-the-counter cold and flu medications, is prohibited in competition above a threshold of 150 micrograms per millilitre.

But: what does that threshold actually mean for you? In most cases it means that you need to be attentive to dosage. Some steps you can take to control the amount of medication you get and protect yourself from an inadvertent doping violation are to:

- *Double-check the dosage of the medications you are using;*
- *Use as instructed; and*
- *Declare any medications you used on your doping control form.*

61. Having successfully completed the training provided by the CCES the Athlete was specifically taught that pseudoephedrine (and again, not cathine) was banned in competition over a certain threshold and she should double check the dosage of her medication to ensure she stayed below that threshold.
62. I cannot find that had the Athlete done all that was expected of her there was a way she would have learned that staying below the permitted threshold of pseudoephedrine could still risk an AAF for cathine.
63. Specifically, I find that there was no reasonable way that the Athlete could have learned of the risk of an AAF for cathine when she was staying within the prescribed limit of pseudoephedrine as recommended by the CCES' training and at least inferentially permitted by the Further Information provided by WADA.
64. To expect this athlete to go beyond the CCES training she passed and to somehow draw a connection between a permitted level of pseudoephedrine and an impermissible level of cathine would be holding her to a standard that is bordering on unachievable.
65. At para. 74 of *Cilic*, that Tribunal specifically spoke to the possibility (albeit a rare one) that the subjective elements may in exceptional circumstances move a person's degree of fault outside of that degree suggested by application of the objective factors.

74. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.
66. In the particular and exceptional circumstances of this case, I find that the subjective factors are of sufficient import and weight that they do move the Athlete's degree of fault into the lower category.
67. I also must take note of the exceptional degree of cooperation by the Athlete at absolutely every stage of this proceeding. While not one of the subjective factors found in *Cilic*, I find that had there been any "balancing" of outcomes to be done, her high degree of cooperation most certainly would have tipped the scale in her favour.
68. The question then becomes where within the range of sanction established of the lower category does this athlete fall.
69. The parties have referenced a large number of cases which I will address in aggregate. In general terms they reference a group of cases involving contaminated supplements and a group of cases involving marijuana.
70. Given the noted "blurring" of the lines between an in competition and an out of competition AAF and the finding I have made that this particular matter is sufficiently exceptional to allow for the subjective factors to move the degree of fault into a lower category, the cases are of limited referential value except in aggregate.

71. In general terms, the contaminated supplements cases fall within the normal level of fault and the marijuana cases fall within the lower level of fault. This case falls somewhere between the two groups.

DECISION

72. Having carefully considered all of the evidence and the submissions of the parties, and using the guidance found in *Cilic*, and with particular reference to the exceptional move into a different category of fault, I find that the Athlete bears a Light degree of Fault and that a six-month period of ineligibility is appropriate.

73. The parties have both submitted that any period of ineligibility should commence as of October 1, 2021, the date of sample collection. I agree.

74. In addition to the above period of ineligibility the other Consequences specified in the CADP to be imposed on the Athlete are:

- a. Public disclosure of the ADRV and the applicable sanction pursuant to CADP Rule 14.3.2; and
- b. Disqualification of all results (CADP Rule 10.1) after October 1, 2021.

Appeal

75. Pursuant to Article 13.2 of the CADP this decision may be appealed by a notice of appeal in writing to all parties before the Doping Panel and to the Appeal Tribunal within thirty (30) days of the notification of the Doping Panel's decision.

ORDER

76. The Request by Ms. Geier for a reduction in sanction is granted and a sanction of six months of ineligibility is imposed on her commencing effective October 1, 2021. In addition, I order the Disqualification of all results after October 1, 2021 along with public disclosure of the ADRV and sanction.

Signed in Victoria, BC this 4th day of May 2022.



Peter Lawless, Arbitrator