



Introduction

- Claimants:** Canadian Centre for Ethics in Sport, Bobsleigh Canada Skeleton, Government of Canada
- Respondent:** Giulio Zardo
- Observers:** World Anti-Doping Agency (WADA), International Bobsleigh & Skeleton Federation
- Type of Dispute:** Doping
- Arbitrator:** Paule Gauthier
- Dates of Decisions:** August 31st & September 6th, 2005



Dispute Summary

Giulio Zardo was a member of Canada's national bobsleigh team who contested the allegation and sanction imposed by the Canadian Centre for Ethics in Sport (CCES) for a first doping offence.

As required under Canada's Anti-Doping Program (CADP), a tribunal was ordered through the Sport Dispute Resolution Centre of Canada (SDRCC) to determine if a doping violation occurred and if so, the applicable sanction.





CCES & Zardo



Background Facts

Giulio Zardo was a member of Bobsleigh Canada Skeleton for about four years until his retirement in April 2005.

During his career, he participated in several national and international competitions, won a World Championship, and was considered one of the best brakemen in the world.

On March 26th, 2005, he underwent a no-notice, out-of-competition doping control test. The lab analysis found evidence of a substance called Finasteride, a masking agent on WADA's Prohibited Substances List. On April 19th, CCES initiated a target test for Mr. Zardo in light of the concerns raised by the lab report.

On April 21st and 22nd, CCES was unable to locate Mr. Zardo. CCES decided to give the athlete prior notice of the doping control test, but on April 23rd, the athlete did not provide a sample.



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Background Facts (cont'd)

In documentation submitted to the CCES on May 20th, Mr. Zardo argued there had been no refusal to submit to doping control.

The CCES completed its initial review of the case, concluding that the athlete had indeed refused to provide a sample and had not demonstrated compelling justification for doing so.

It issued a Notice to the Athlete to advise that Mr. Zardo had committed an anti-doping violation and faced two years of ineligibility from competition and permanent ineligibility from direct financial support from the Government of Canada.

On June 13th, Mr. Zardo's application for a Therapeutic Use Exemption (TUE), which would have permitted his use of Finasteride, was denied by the CCES.



CCES' Position



The CCES case was based on the following arguments:

- The athlete had been tested many times previously and was familiar with the procedures;
- Mr. Zardo was targeted for follow-up testing because of concerns raised by the laboratory that analyzed the first sample;
- The athlete did not provide a compelling reason to justify his refusal to provide a urine sample for testing; and,
- He made a conscious decision to continue using Finasteride, knowing that it had been added to WADA's Prohibited List on January 1st, 2005.



Athlete's Position

Mr. Zardo's case was based on the following arguments:

- If a TUE had been granted, he would not have been targeted for testing;
- He knew of the notification for doping control, but claimed that he never refused to provide a sample on April 23rd, 2005, since at that time he did not understand why he had to be tested;
- He had compelling justification to refuse to submit to sample collection;
- There were “exceptional circumstances” which would allow a Doping Tribunal to reduce or eliminate the penalty for a doping offence;
- The CCES refusal to grant him a TUE for Finasteride was discriminatory;
- Since he had retired from competition as of April 6th, 2005, he was no longer subject to any doping control by the CCES or any other sport organization; and,
- His relationship with the national sport organization had deteriorated considerably, affecting his mindset when faced with the second doping control test.



Arbitrator's Analysis

In her analysis, arbitrator, Paule Gauthier, noted that she had no jurisdiction to review the decision on the TUE granted by the CCES regarding the substance Finasteride.

Referring to the Canadian Anti-Doping Program (CADP), Ms. Gauthier noted that an athlete remains subject to out-of-competition doping control (including target testing) by the CCES for a period of 18 months after retirement.

Concerning the question of whether Mr. Zardo had committed a doping violation, the arbitrator cited rule 7.24 of the CADP: *“Refusing, or failing without compelling justification, to submit to Sample collection after notification as authorized in applicable anti-doping rules or otherwise evading Sample collection is an anti-doping rule violation”*.



Arbitrator's Analysis (cont'd)

Citing longstanding precedents, Ms. Gauthier noted that it is up to the athlete to prove that he took all the reasonable steps to submit to doping control and that his conduct was not negligent or intentional.

Based on the evidence presented, the arbitrator concluded that, since Mr. Zardo did not submit to doping control between April 21st and 23rd, his negligent conduct was equivalent to a refusal to submit to a doping test.

The arbitrator's decision further noted that *“the Athlete knew or should have known the consequences of using the substance known as Finesteride without a TUE and the possibility of being selected for testing...”*

Ms. Gauthier rejected the athlete's explanations and concluded there had been an anti-doping rule violation:

“He did not convince me that he did everything possible to submit to doping control. On the contrary, he convinced me that he did everything possible to avoid it.”



CCES & Zardo



Ruling

The arbitrator imposed the required sanction for a first doping offence: two years of ineligibility from competition and permanent ineligibility from Government of Canada funding. The period of ineligibility started on the date of the hearing decision – August 31st, 2005.





Lessons Learned

1. In doping cases, an athlete's duty of care is very broad. "Duty of care" refers to the requirement that a person act with the attention and prudence that any reasonable person would use under the same circumstances.
2. An athlete cannot hide a poor decision or negligent conduct behind a lawyer's opinion or parent's comments, especially when the applicable rules are clear.
3. Athletes remain subject to out-of-competition doping control for months after retirement.

