

Doping Hearing Panel of the Badminton World Federation

DOPING HEARING PANEL DECISION

Decision delivered on 18 October 2016

Athlete:	Ms. Rong SCHAFFER, USA
Date of Hearing:	Wednesday 28 th September 2016
Place of Hearing:	Teleconference in five locations around the world
The Doping Hearing Panel:	Mr. Rune B. Hansen (Chair) Dr. P.S.M. Chandran Prof. Dr. Toni Graf-Baumann
Athlete Representative:	Nick Schafer – present with the athlete
Expert Witness:	None called
Anti-Doping Rule Violation:	Violation in terms of Article 2.1.1 of the Badminton World Federation Anti-doping Regulations (BWF ADR, effective from January 1. 2015).

I. The Facts

1. On 24 March 2016, after a Women's Singles match Ms. Rong SCHAFFER (USA) was selected for an in-competition doping control test at the Sky City New Zealand Grand Prix Gold held in Auckland, New Zealand. She provided a urine sample which was collected by Drug Free Sport New Zealand (DFSNZ). The sample was secured at 16:24pm and sent for analysis (sample code 6167585) to the WADA Accredited Australian Sports Drug Testing Laboratory (ASDTL) in Sydney.
2. In a lab result dated 13 May 2016, the Australian Sports Drug Testing Laboratory reported presence of Terbutaline in sample 6167585. Terbutaline is listed under class S3. B2-Agonists,

as a Specified Substance prohibited at all times under the 2016 WADA Prohibited Substance List.

3. On 20 June 2016, Ms. Schafer requested that the B sample (B6167585) be analyzed.
4. In a lab result dated 06 July 2016, the Australian Sports Drug Testing Laboratory again reported the presence of Terbutaline in sample B6167585.
5. On 18 July 2016, Ms. Schafer was informed of the B sample analysis results and also notified that she was provisionally suspended from competition and the possibility of sanctions as a result of an Adverse Analytical Finding (AAF).
6. The Athlete has not competed since 15 April 2016.
7. On 27 September 2016, BWF sent a letter to Ms. Schafer confirming the hearing date and re-confirmed the provisional suspension.

II. The Applicable Regulations

8. The Athlete was charged with a breach of **Regulation 2.1.1 of the BWF Anti-Doping Regulations (BWF ADR)**:
Regulation 2.1.1 “It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body. Players 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 Player’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.”
9. The Athlete notes that she does not contest the presence of the Prohibited Substance Terbutaline and admits to violation of Article 2.1.
10. **Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**
Article 10.2.1 of the BWF ADR states: *“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 Player 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 BWF can establish that the Anti-Doping Rule Violation was intentional".*

11. The BWF Hearing Panel is convinced that the Anti-Doping Rule Violation was not intentional; therefore, **Article 10.2.1** does not apply.

12. Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

Article 10.5.1 of the BWF ADR states: *"Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6".*

10.5.1.1 *"Specified Substance – Where the anti-doping rule violation involves a Specified Substance, and the Player or other person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player's or other Person's degree of Fault".*

10.5.1.2 *"Contaminated Products – In cases where the Player or other Person can establish No Significant Fault or Negligence 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 of Ineligibility, depending on the Player's or other Person's degree of Fault".*

13. Burden and Standards of Proof

Article 3.1 of the BWF ADR reads:

"BWF shall have the burden of establishing that an anti-doping regulation violation has occurred. The standard of proof shall be whether the BWF has established an anti-doping regulation violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Regulations place the burden of proof upon the Player 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."

14. **The Court of Arbitration for Sport (CAS)** has established such jurisprudence regarding the athletes' burden of proof (Arbitration CAS 2011/A/2384):

"once an adverse analytical finding has been established the burden of proof shifts to the athlete who has to establish on the balance of probabilities in order to escape sanction, or to obtain a reduction of the sanction, how the prohibited substance entered his system and that he in an individual case bears no fault or negligence, or no significant fault or negligence. For the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The athlete thus needs to show that one specific way of ingestion is marginally more likely than not to have occurred."

15. Ms. Schafer explained at the hearing that she accepts that Terbutaline was present in the Sample collected "in-competition" from her on 24th March 2016, and that she has consequently committed an anti-doping rule violation under Article 2.1 of the BWF ADR. Her argument was that she had done so inadvertently and that no sanction should take place according to Regulation 10.4, or at least that a sanction should be reduced according to Article 10.5.1 of the BWF ADRs.

III. The Panel's Deliberations and Conclusions

How did Terbutaline enter the body of Ms. Schafer?

16. Ms. Schafer has explained that she occasionally uses an inhaler to help with breathing problems. In her written and oral statements, she explained that in New Zealand before she got tested she used a terbutaline inhaler to improve her breathing. Prior to using the inhaler, she checked the WADA prohibited list and did not find the name of the medicine Terbutaline on the list.

17. The panel find her story to be truthful and believes the positive test is without a doubt due to the use of a Terbutaline inhaler shortly before the test was taken.

IV. Does the athlete bear no fault or negligence?

18. The athlete has explained that she in 2015 was recommended by a friend to try a Terbutaline inhaler to ease her breathing problems. She trusted that her friend would not recommend

anything that could jeopardize her. Nevertheless she downloaded the 2015 version of the 2015 prohibited list. She did a search for Terbutaline, and could not find the substance on the list. She then decided that it would be legal to use the Terbutaline inhaler when it occasionally was needed to ease her breathing.

19. The panel notes that Terbutaline is a beta-2 agonist, and that it is not one of the two beta-2 agonists (Salbutamol and Formoterol) that is explicitly allowed according to the prohibited list (2015). The Athlete has been careless when studying the Prohibited list and has without doubt acted with negligence.

V. Reduction of the Period of Ineligibility based on no significant fault or negligence

20. The Athlete accepted the advice of a friend who was neither a doctor nor nutrition expert. She then did a superficial search on the Internet and of the prohibited list without understanding that the substance in fact was listed as illegal.

21. In the opinion of the panel Ms. Schafer has indeed been negligent. An athlete must never start to use a product without consulting a doctor or any other qualified expert. The combination of advice from a trusted friend and superficial search on the Internet and the prohibited list is not nearly enough to avoid negligence.

22. She is responsible for what she has in her system, and she cannot be excused by the fact that the medical support given to the players in the United States is limited.

23. In the Athletes favour, it is the Panels opinion that she did not take Terbutaline to cheat or to gain a performance enhancing advantage. Furthermore, she has admitted the Anti-doping violation both orally and in writing and regrets her actions and negligence.

VI. Appropriate Sanction

24. According to 10.5. the Player's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility. The operation of 10.5 gives the Panel a possibility to give a sanction between zero and 24 months.

25. Both objective and subjective elements must be taken into consideration when deciding the degree of negligence, cf CAS 2013/A/3327 M. Cilic vs ITF.

26. When carefully considering all elements of the case, it is the opinion of the Hearing Panel that Ms. Schafer's degree of negligence is rather severe.
27. It is the Panels opinion that a **period of ineligibility of 12 months** is the appropriate sanction in this case.
28. According to 10.11.3 any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility imposed.
29. The Hearing Panel finds that it is correct and fair to **backdate the period of ineligibility** to the date of sample collection **24th March 2016**.
30. Each party should bear its own costs in connection with the hearing.

Conclusion

1. **Ms. Rong SCHAFFER is sanctioned with a period of ineligibility of twelve (12) months, commencing on 24th March 2016.**
2. **Each party shall bear its own legal costs and other expenses incurred in connection with this Doping Panel Hearing.**

This done and signed this 18th day of October 2016



Rune B. Hansen (Chair)

On behalf of Panel members - Dr. P.S.M. Chandran and Prof. Dr. Toni Graf-Baumann.