

Decision of the IBSF Doping Hearing Panel

in the matter of

Mr. Dorian Willes

To:
Mr. Dorian Willes
1700 Fowler
Boise, ID-83706
United States

By e-mail: dorianwilles1@gmail.com
Date: August 18th, 2016

I BACKGROUND

1. Mr. Willes, born on August 22, 1977, is registered with the USA Bobsled & Skeleton Federation.
2. On March 19, 2016 a Sample of urine (Sample number 1585777) was collected from Mr. Willes at the Bobsleigh and Skeleton Para World Championship in Park City, Utah, USA. On April 11, 2016 the IBSF received from the LAB-UTAH-USA WADA accredited Laboratory an Adverse Analytical Finding ("AAF") with regard to the above mentioned Sample, of the Prohibited substance 'Methylhexaneamine).
3. Methylhexaneamine is a Prohibited Substance according to the WADA Prohibited List and is classified as a Stimulant (S6- specified stimulant).
4. On April 18, 2016, in accordance with the IBSF Anti-Doping Rules (the "**Rules**"), Mr. Willes and the United States Bobsled and Skeleton Federation were formally notified of the AAF by letter of the IBSF. Mr. Willes was informed that, in accordance with Article 7.9 of the Rules, he was provisionally suspended from national and international competitions until the procedure has been completed or until the B Sample Analysis proves negative. On May 20, 2016 Mr. Willes informed the IBSF through his chosen representative Mr. David Kurtz that he will accept the Provisional Suspension ex Article 7.9 of the Rules.
5. The IBSF advised Mr. Willes in its letter of April 18, 2016 of his right to have the B Sample tested and advised him that he should inform the IBSF of his decision to have it tested by no later than by April 25, 2016. The B Sample analysis was planned to be performed on April 29, 2016 by the same WADA Accredited Laboratory which performed the A Sample analysis. Mr. Willes was advised that a failure to request the B Sample analysis within the specific time provided would be considered as a waiver to the B Sample analysis.

6. The IBSF further advised Mr. Willes that should he waive the right to have the B Sample analysis, he will be deemed to have accepted the results of the "A" Sample analysis.
7. On April 25, 2016 the IBSF received the duly completed B Sample Analysis Request from Mr. Willes, in which he requested that the B Sample will be tested.
8. The IBSF notified on May 3, 2016 Mr. Willes and the United States Bobsled and Skeleton Federation that Mr... Willes was not present at the site of the Laboratory in Utah for opening and analysis of his B Sample on April 29, 2016 and that therefor he deemed to have accepted the A Sample result as positive. In the same letter the deadline to request a hearing with the IBSF Disciplinary Commission was set at May 13, 2016.
9. By email of May 9, 2016 the IBSF advised the IBSF Positive Cases Subcommittee that Mr. Willes requested the B Sample Analysis again, since he did not understand that he should have been present at the set date of the B Sample opening, which was accepted. Mr... Willes waived his rights to be present at the B Sample opening. On May 20, 2016 the IBSF Positive Cases Subcommittee received the information from the IBSF that the result of the B Sample Analysis proved to be positive. Mr. Willes was invited to inform the IBSF before June 3, 2016 whether he would like to be heard by the IBSF disciplinary commission.
10. On May 30, 2016 the laboratory document package was sent to Mr. Willes.
11. Mr. Kurtz as representative of Mr. Willes filed with the IBSF on June 3, 2016 the Request for Hearing. In his email of July 8, 2016 Mr. Kurtz explains to withdraw the agreement of Mr. Willes to the Provisional Suspension and requests the Doping Hearing Panel to have an Expedited Final Hearing no later than August 15, 2016 pursuant to IBSF ADR 7.9.3 (b).
12. The hearing before the Doping Hearing Panel took place by means of a conference call on Friday August 5, 2016. On behalf of the Doping Hearing Panel of the IBSF Dr. Alessia di Gianfrancesco, Dr. Prof. Peter Hemmersbach, (chairman) Mr. Dolf Segaar, sportslawyer and

Marie Wassmer- IBSF Anti-doping officer were present. On behalf of Mr. Willes, besides himself, Mr. David Kurtz – Athlete's representative and Mr. Terry Holland - Para Skeleton Coach- as witness were participating in the call. Minutes of the call are attached to this decision (**attachment I**).

II. Opinion of Mr. Willes

12. Mr. Willes provides his opinion (date not known to the Doping Hearing Panel) (**attachment II**, IBSF Drug test letter) on the matter of which the following is a citation:

"I am writing to plead with the IBSF that there was no negligence on my part for the banned substance being in my system, that I was VERY thorough when checking the supplements I was taking for banned substances. The last time I took the supplement that I attached a picture of (Executioner) was 2 days prior to the race when I went to workout at the local gym in Park City. I then later that day sent David Kurtz a picture of the substance list on my pre workout to double check that I was not doing or taking anything that might be an issue. David responded back about 30 min later telling me NOT to take any more of it so I did as I was told by my team captain. Once again I would like to emphasize that I truly believed I was being very cautious and diligent in checking ALL substances in ALL of my supplements I was taking by checking them letter for letter on the WADA app and if I understood or was better educated on the chemical breakdown of these substances I could of made a better decision or at least a better educated decision with what I was using. I would request a hearing with the IBSF so I may present my facts to the powers that be."

13. Although Mr. Willes in its initial written opinion on the matter did not make any complaints on the procedure that was being followed with regard to testing, his representative Mr. Kurtz did complain on the formalities on behalf of Mr. Willes (see hereinafter and **Attachment III**). The Doping Hearing Panel takes it for granted that Mr. Willes at the time he filed his opinion to the IBSF was not aware of any potential failures that representative Mr. Kurtz later on established with regard to procedural failures. The Doping Hearing Panel will review the procedural complaints therefore as being stated by Mr. Willes in his initial opinion.

14. According to the additional defense of Mr. Willes FILED BY Mr. Kurtz the following is relevant (attachment III):

- A. No Anti-Doping offense was committed as the IBSF Sample Collection Authority (USADA) conducted Sample Collection in violation of the policy and mandatory requirements of the IBSF Anti-Doping Rules (ADR) and of the World Anti-Doping Code (WADC) International Standard for Testing and Investigations (ISTI) rendering the Laboratory's Adverse Analytical Finding In-Co

- B. No Anti-Doping offense committed as the WADA approved Laboratory selected by USADA conducted Sample Testing in violation of the policy and mandatory requirements of the IBSF Anti-Doping Rules (ADR) and of the World Anti-Doping Code (WADC) International Standard for Laboratories rendering the Laboratory's Adverse Analytical Finding In-Competition fatally defective and invalid.
 - C. The Substances, Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review specifically set forth on the Prohibited List (IBSF ADR 3.1) are no longer presumed to be medically and scientifically valid, and are subject to rebuttal of more recent and contemporary medical/scientific research. ISSF V. WADA 2013/A/3437.
 - D. The Adverse Analytical Finding of the substance Methylhexanamine, specifically and expressly listed on the WADA 2015 Prohibited List for In-Competition use, is based upon out of date science of Analytical Methods and Decisional Limits contrary to international standards of testing and enforcement regulations. Further, WADA List of Prohibited Substances does not conform to usual scientific practice, leading to confusion for coaches and athletes.
 - E. The IBSF cannot meet its burden of proof to establish an Anti-Doping Offense thereby foreclosing the imposition of IBSF ADR Article 9 Disqualification of Result.
 - F. Should the Hearing Panel decide the Adverse Analytical Finding valid, in conformity with the mandatory IBSF ADR and WADA International Testing Standards, the Athlete has met his burden of proof to establish No Fault thereby resulting in a Sanction under IBSF ADR Article 10 of the minimum Sanction: Warning/Reprimand only, no period of ineligibility.
15. The Doping Hearing Panel has made clear during the hearing that it cannot and will not rule in the arguments brought forward by Mr. Willes under C and D above. These arguments relate to the Prohibited List that has been established by WADA and its stakeholders. It is not up to the Doping Hearing Panel of the IBSF to form an opinion on the question whether the decision of WADA is still up to date in all its relevant aspects. Mr. Willes and his representative Mr. Kurtz. Acknowledged that this was foremost a matter for CAS to decide upon.
16. The Doping Hearing Panel rules for the above reasons with regard to the defense under C and D against Mr. Willes.

III. Methylhexaneamine: S6- specified stimulant

17. Methylhexaneamine is a Prohibited Substance according to the WADA Prohibited List and is classified as a "Specified Stimulant". This fact and the AAF relating to Methylhexaneamine has not been contested by Mr. Willes. Mr. Willes explained in his "IBSF drug test letter" (Attachment II) that he used the supplement "Executioner", which contains "1,3-dimethylamylamine". Mr. Willes has presented the IBSF a picture of the back site of Executioner, showing that all the composites of this dietary supplement including "1, 3-dimethylamylamine" were mentioned and therefor know to Mr. Willes. He explained in the aforementioned letter that he tested all ingredients mentioned on the back site of "Executioner" in the WADA app, but that no Prohibited Substance popped up.

17. Already in June 16, 2011 USADA warned athletes against the use of dietary supplements that may contain the prohibited stimulant Methylhexaneamine (<http://www.usada.org/athlete-advisory-methylhexaneamine-and-dietary-supplements/>). USADA stipulated clearly that it cannot give guarantees to athletes regarding which products are safe and free from contamination:

"Athletes need to be aware that they assume the risks of adverse health outcomes and positive anti-doping tests when choosing to take supplements. Athletes are urged to take necessary steps to be informed consumers and evaluate any supplements. (...). Please remember that strict liability applies at all times, and an athlete is responsible for any prohibited substances found in their system".

Mr. Willes has stated repeatedly that "1,3-dimethylamylamine" was not mentioned in the WADA Prohibited List, but the Doping Hearing Panel points out that an easy search on internet would have made clear that 1,3-dimethylamylamine is just another name for the Prohibited substance Methylhexaneamine.

Wikipedia (<https://en.wikipedia.org/wiki/Methylhexanamine#Safety>) explains f.i. the following:

"Methylhexaneamine (trade names Forthane, Geranamine) or methylhexamine, commonly known as 1,3-dimethylamylamine (1,3-DMAA) or simply dimethylamylamine (DMAA), is an indirect sympathomimetic drug invented and developed by Eli Lilly and Company and marketed as an inhaled nasal decongestant from 1944 until it was voluntarily withdrawn from the market in 1983.

Since 2006 methylhexaneamine has been sold extensively under many names as a stimulant or energy-boosting dietary supplement under the claim that it is similar to certain compounds

found in geraniums, but its safety has been questioned as a number of adverse events and at least five deaths have been associated with methylhexaneamine-containing supplements. [2] It is banned by many sports authorities and governmental agencies." (emphasis by Doping Hearing Panel).

18. The presence of Methylhexaneamine in the body of Mr. Willes constitutes an anti-doping rule violation under Article 2.1 of The Rules. Mr. Willes did not contest that the finding itself according to current WADA and IBSF regulations will result in a doping offence according to the current regulations (not withstanding defense under C and D, vide no 15 above).

IV. Departures from any other International Standard or other anti-doping rule or policy

19. Before coming to a conclusion on the consequence of the AAF with regard to Mr. Willes, the Doping Hearing Panel needs to form an opinion with regard to the statement of Mr. Willes mentioned in his defense under A and B of Attachment III. It is the opinion of Mr. Willes that 1) The Adverse Analytical Finding is invalid for the failure of USADA to follow the expressed mandatory Rules of the ISTI and the IBSF; 2) The Record of Exhibits and Testimony supports the Athlete facing a period of ineligibility in the range of Warning/Reprimand only to three (3) month period of ineligibility should the Panel find a valid Adverse Analytical Finding.
20. According to Mr. Willes the Doping Control Officers at the Bobsleigh and Skeleton Para World Championship in Park City, Utah, USA failed to comply correctly with the WADA and IBSF procedures. The Doping Hearing Panel has taken notice of the testimonies of the certified Doping Control Officers Gary Robbins (**attachment IV**) and Dr. Amy Brenner (**Attachment V**). Mr. David Kurtz responded to the subject emails with **Attachment VI** and summarized the procedure as follows (attachment VI):

"All Athletes tested were not notified of selection for testing until after the conclusion of the Awards Ceremony. All Athletes (Para Bob & Para Skeleton), Coaches, Officials, Volunteers,

Family, Friends, Track Crew were exchanging hugs, kisses, liquids, food, spirits and engaging in urine elimination for at least 60 minutes without the required ISTI Warnings or Doping Controls. Therefore, the uncontrolled Post-Competition environment exposed the Athlete to transference of a prohibited substance or unknown ingestion of a prohibited substance In-Competition and fatally compromised the Integrity of the Adverse Analytical Finding of the USADA Laboratory. Testimony of Athlete and Witnesses."

21. The Doping Hearing Panel refers to article 5.8 of the Rules, relating to In-Competition Testing. In this article the procedure is written down to be followed upon selection of an Athlete. Article 5.8.2 mentions that the official responsible for notifying the Athlete for Doping Control (whether the Doping Control Officer (DCO) or Chaperone) shall write the name of the Athlete on the official notification form and present it to the Athlete, as discreetly as possible, immediately after the Athlete has completed his competition. The Athlete shall sign to confirm receipt of the notification and retain a copy.

In the matter of Mr. Willes, USADA has been the Sample Collection Authority. Its procedure for Sample collection foresees that the DCO and Athlete will complete the Sample collection forms together, either hard-copy or via the USADA Paperless Sample Collection System, to document the circumstances of the Sample collection process.

On the USADA doping control official record (DCO record) Mr. Willes has been notified at 7:49 pm and he underwent Sample processing at 9:03 pm. This record has been signed by him.

22. The main complaint of Mr. Willes with regard to the procedure that was followed in the subject matter relates to the fact that he was first notified after the Awards Ceremony of his selection for testing. The Doping Hearing Panel refers to paragraph 20 above. The Doping Control Officer Mr. Gary Robbins declares in Attachment IV his decision to notify and test Athletes first after the Awards Ceremony as follows:

"7. Because athletes were not required to stay at the finish line of the course after they finish their runs and due to the distance between the finish line and the Doping Control Station, it was impractical to try and notify athletes at the finish line. Stated differently, by the time the results for a particular competition are determined, many of the athletes may no longer be near the finish line.

8. All of the athletes, however, were required to attend the Awards Ceremony, which was located in close proximity to the Doping Control Station and occurred at the conclusion of the competitions. Accordingly, given the logistical issues, I determined the most efficient and effective time and location to notify athletes was at the Awards Ceremony."

23. Although it may be questioned whether the testing procedure mentioned above did comply with what the Rules mandatory oblige for testing procedures, the Doping Hearing Panel comes to the conclusion that the outcome of that question is nevertheless irrelevant in the subject matter. The Doping Hearing Panel grounds to this conclusion on article 3 of the Rules:

3.1 Burdens and Standards of Proof

"IBSF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IBSF has established an anti-doping rule 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."

"3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti doping rule violation shall not invalidate such evidence or results. If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then IBSF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti doping rule violation."

24. The burden is on the Athlete or other Person to establish, a departure from the International Standard or other anti-doping rule or policy that could reasonably have caused an anti doping rule violation based on the AAF or other anti-doping rule violation. If the Athlete or other Person does so, the burden shifts to IBSF to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.

25. The Doping Hearing Panel in the matter of Mr. Willes rules article 3 and especially article 3.2.3 applicable. It comes to the conclusion that in the event the testing procedure that was followed on March 19, 2016 should be considered as a departure from the International Standard for testing, as is argued by Mr. Willes, and for that reason the burden of proof of an anti doping

violation by Mr. Willes shifts to IBSF, IBSF has to the comfortable satisfaction of the Doping Hearing Panel proven that the departure did not cause the AAF of Mr. Willes.

26. The Doping Hearing Panel comes beyond reasonable doubt to the above conclusion. It is based on the defense of Mr. Willes (Attachment II), in which he stated that he used supplements (i.c. Executioner), that contains the Prohibited Substance Methylhexanamine

and that he was urged to stop using it by Mr. David Kurtz immediately after the use has become known to him.

27. The Doping Hearing Panel rules for the above reasons with regard to the defense under A and B against Mr. Willes.

This brings the Panel to the question whether a sanction should be placed upon Mr... Willes and if so whether Mr. Willes has established "No Significant Fault or Negligence", in which event a sanction can be reduced.

V. Specified Substances and Sanctions

- 28 With regard to Specified Substances and Sanctions the following articles of the Rules are relevant:

- A) **10.2.1** The period of Ineligibility shall be four years where:
10.2.1.2 The anti-doping rule violation involves a Specified Substance and IBSF can establish that the anti-doping rule violation was intentional.
- B) **10.2.3** As used in Articles 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.
- C) **10.5.1** 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 Substances
Where the anti-doping rule violation involves a Specified Substance, and the Athlete 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 Athlete's or other Person's degree of Fault.

VI. Elimination or Reduction of the Sanction

29. The Doping Hearing Panel has considered whether there are reasons to eliminate or reduce the maximum sanction of 4 years. A sanction to Mr. Willes can be eliminated or reduced due to specific circumstances. Article 10.5 of the Rules provides that, when a specified substance has been found and Mr. Willes can establish how the substance entered his body and that the

taking of the substance was not intended to enhance performance or mask the use of a performance-enhancing substance the applicable sanction ranges from a mere reprimand to, at a maximum, two years of ineligibility.

30. According to this article the absence of intent to enhance performance or mask the use of a performance-enhancing substance must be proven by Mr. Willes to the comfortable satisfaction of the Doping Hearing Panel based on objective circumstances. The Panel has come to the conclusion that Mr. Willes succeeded in proving the absence of intent.
31. The Doping Hearing Panel considers a period of one year of ineligibility of Mr. Willes in the subject matter reasonable. 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. USADA had sufficiently warned athletes against the use of dietary supplements that may contain the prohibited stimulant Methylhexanamine. An easy search on Internet would have shown Mr. Willes that the supplement he used (Executioner) contains Methylhexanamine. Mr. Willes stated that he is very thorough when checking the supplements he was taking for banned substances. The Doping Hearing Panel however condemns Mr. Willes severely that he started using Executioner already without checking with his Federation, USADA, his doctor or any other relevant person whether Executioner contains banned substances. The fact that within 30 minutes Mr. Kurtz warned Mr. Willes not to use Executioner shows that it was easy to establish that it contains prohibited substances or at least the risk thereof.
32. On the other hand Mr. Willes made clear in his verbal testimony that he did not intend to enhance performance, but that he uses supplements because of the variety of sports he is involved in and that although not sufficient in the subject matter he is very thorough in checking his supplements on banned substances.
33. Balancing the two considerations mentioned above brings the Doping Hearing Panel to a sanction of 1 year Ineligibility.

VII. Commencement of the period of ineligibility

34. Article 10.11 of the Rules stipulates: "(...), *the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility*" and article 10.11.3 of the Rules are relevant as well: " *If a Provisional Suspension is imposed and respected by the Athlete or*

other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed."

35. Since the Provisional Suspension of Mr. Willes started on April 18, 2016 already the period of ineligibility will end on April 17, 2017.

IX. Decision

36. The AAF constitutes an anti-doping violation of Mr. Willes for which the Doping Hearing Panel sanctions Mr. Willes with a period of ineligibility of 1 year, during which period Mr. Willes is not entitled to participate in any competition or activity, as stipulated in article 10.12.1 of The Rules.

37. The Doping Hearing Panel refers to article 9 of the Rules, which states:

"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes"

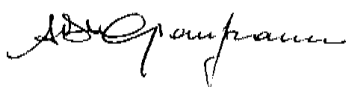
38. IBSF did not request for any compensation of costs.

IBSF Doping Hearing Panel, August 18th , 2016

Dr. Prof. Peter Hemmersbach



Dr. Alessia di Gianfrancesco



Dolf Segaar



Enclosed:

- D. Kurtz reply on USADA's statement
- Minutes of the Hearing
- Athletes pre-hearing memo
- Athletes preliminary Exhibit & Witness list
- Reply from DW on AAF notification
- Statement of Mrs. Brenner (USADA)
- Statement of Mr. Robbins (USADA)

Copies to:

- David Kurtz, Athlete's representative
- Lisa McCumber, USADA result management
- Heike Groesswang, IBSF Secretary General
- Darrin Steele, USA Bobsled and Skeleton Federation
- Kerwin Clarke, WADA Results Management Manager