AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

IN THE MATTER OF THE ARBITRATION BETWEEN **UNITED STATES ANTI-DOPING AGENCY,** **Claimant,** **-vs-** **SGT. ELLIS COLEMAN,** **Respondent.**	**AAA Case No.: 01-22-0002-1021** **HOMER C. LA RUE** **ARBITRATOR** **Final Award**

APPEARANCES

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I. INT=RODUCTION

Pursuant to the American Arbitration Association's ("**AAA**") Commercial Arbitration Rules ("**AAA Rules**") as modified by the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes (effective as revised January 1, 2021) ("**Arbitration Procedures**") as contained in the Protocol for Olympic and Paralympic Movement Testing (effective as revised January 1, 2021) (the "**USADA Protocol**"), and pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, *et seq*. (the "**Act**"), an evidentiary hearing was held via video conference on July 28, 2022, before the duly appointed arbitrator, Homer C. La Rue ("the Arbitrator" or "Arb. La Rue").

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties do hereby FIND and AWARD as follows:

II. THE PARTIES

1. United States Anti-Doping Agency ("**USADA**" or "**Claimant**") is the independent anti-doping organization, as recognized by the United States Congress, for all Olympic, Paralympic, Pan American and Parapan American sport in the United States with headquarters in Colorado Springs, Colorado. USADA is authorized to execute a comprehensive national anti-doping program encompassing testing, results management, education, and research, while also developing programs, policies, and procedures in each of those areas.

2. Sgt. Ellis Coleman ("**Sgt. Coleman**" or "**Respondent**") is a 30-year-old Greco-Roman wrestler who has been a member of USA Wrestling for over a decade. He is an elite-level athlete who serves in the United States Army and is a member of the Army's World Class Athlete Program. He has competed in several international competitions, including the 2019 Pan-American Championships where he placed second and the 2019 Pan-American Games where he placed third. He wants to compete in the 2024 Olympics and then retire to become a wrestling coach. He is subject to the anti-doping rules of the USADA.

3. USADA was represented in this proceeding by Jeff T. Cook, Esq., USADA General Counsel, Nadia Silk, Esq., USADA Legal Affairs Director, and Spencer Crowell, USADA Olympic & Paralympic Counsel.

4. Respondent was represented in this proceeding by Bradley T. Bufkin of the Law Offices of Bufkin & Schneider Law, LLC.

5. USADA and Respondent will be referred to collectively as the "**Parties**" and individually as a "**Party**."

III. LEGAL STIPULATIONS

6. Pursuant to the Stipulation of Uncontested Facts and Issues Between the USADA and Ellis Sgt. Coleman ("Stipulation") dated April 8, 2022 (R-10[1]), Respondent acknowledges that a provisional suspension has been imposed, and USADA agrees that time served under the provisional suspension will be credited toward any period of ineligibility, beginning on February 28, 2022, that the Arbitrator may determine. Pursuant to this stipulation, the Parties agree that the appropriate start date for Respondent's period of ineligibility is February 28, 2022. (R-10, para. 9)

7. It is undisputed that Respondent used a nutritional supplement containing Dehydroepiandrosterone ("DHEA") and that his sample tested positive for DHEA, a prohibited anabolic agent of exogenous origin. Respondent accepts that he committed an anti-doping rule violation ("ADRV"). (Respondent Pre-Hearing Brief, page 4; R-10).

8. The USADA does not contest that Respondent has established that his ADRV was unintentional. (USADA Pre-Hearing Brief, Section III).

IV. ISSUE

9. The main issue before the Arbitrator in this proceeding is the appropriate sanction to be applied for this ADRV. The Arbitrator is asked to consider whether the Respondent has met his burden of proof that there was no significant fault or negligence, and that a reduced degree of fault warrants a reduced period of ineligibility, down to a minimum of 12 months.

10. The USADA has also asked for the disqualification of any results obtained by Respondent and the forfeiture of any competitive results, including any award of medals, points, and prizes on and after December 15, 2021 through the commencement of the provisional suspension, on February 28, 2022.

V. JURISDICTION

11. Respondent and USADA stipulate that this arbitration is governed, *procedurally and substantively*, by the USADA Protocol, which is applicable to Respondent and to *Sample #152073V*, collected out of competition on December 15, 2021. (R-7, p. 009; R-10).
12. Under R-7 of the Arbitration Procedures, which are part of the USADA Protocol, the Arbitrator has the power to rule on his or her own jurisdiction.

[1] "R", followed by a number, means "Respondent Exhibit", followed by the number thereof. "C", followed by a number, means "Claimant Exhibit", followed by the number thereof.

13. No party has objected to the jurisdiction of the Arbitrator or to the arbitrability of the claim.

14. The Arbitrator finds, therefore, that this matter is properly before this Arbitrator.

VI. BURDEN AND STANDARD OF PROOF

15. Article 3.1 of the USADA Protocol provides:

> The *Anti-Doping Organization* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the *Anti-Doping Organization* 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. Where the Code places 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability. [*Italic*s in original].
>
> [Comment to Article 3.1: This standard of proof required to be met by the Anti-Doping Organization is comparable to the standard which is applied in most countries to cases involving professional misconduct.]

16. Under Article 10.6.2 of the USADA Protocol, the Athlete bears the burden of establishing that he or she bears No Significant Fault or Negligence in respect of the ADRV, such that the penalty can be reduced.

VII. PROCEDURAL HISTORY

17. This proceeding was initiated on May 13, 2022, pursuant to USADA's letter notifying the AAA of Respondent's request for a hearing.

18. On June 2, 2022, pursuant to R-15 of the Arbitration Procedures, the Arbitrator held a preliminary hearing with the Parties.

19. The Arbitrator issued Order No. 1, Scheduling Order, on June 6, 2022.

20. Among other things, Order No. 1 set the dates for the submission of pre-hearing briefs, exhibits and designated witnesses and set the hearing date for July 28, 2022. A draft of Order No. 1 was transmitted to the Parties for questions and/or comments before being made effective on June 6, 2022.

21. On June 23, 2022, Respondent submitted its pre-hearing brief and supporting evidence to the Tribunal and the USADA.

22. On July 13, 2022, Respondent's counsel requested two (2) subpoenas for witnesses. The subpoenas were executed and returned to counsel on July 13, 2022.

23. Pursuant to the agreement of the Parties as set forth in Order No. 1, Respondent's counsel, on July 14, 2022, sought to supplement Respondent's witness list and requested that the Arbitrator execute a third subpoena. USADA objected to the issuance of the subpoena and to the appearance of the witness at the upcoming hearing on July 28, 2022.

24. On July 14, 2022, USADA submitted its pre-hearing brief to the Arbitrator and Respondent's counsel.

25. The Arbitrator ordered that the issuance of the subpoena to Respondent's proposed witness be held in abeyance until ordered otherwise by the Arbitrator and permitted USADA to submit a written opposition to the subpoena-request by July 19, 2022. Respondent was permitted to respond to USADA's opposition by July 20, 2022, with no sur reply being permitted.

26. On July 21, 2022, the Arbitrator issued Order No. 2, Subpoena for Dr. Haight, granting in part, and denying in part USADA's opposition to the issuance of the subpoena.

27. On July 21, 2022, following the issuance of Order No. 2, the Arbitrator held a final preliminary hearing to decide on the final details for the hearing scheduled for July 28, 2022. Among the issues discussed was the Arbitrator's Order No. 2 and the procedures necessary if Respondent decided to call Dr. Haight.

28. On July 21, 2022, the Arbitrator issued Order No. 3, Supplemental Case Management Order No. 1. Order No. 3 recited Respondent's notice to USADA and the Arbitrator that Respondent would not call Dr. Haight to testify at the hearing on July 28, 2022.

29. On July 28, 2022, the Arbitrator held a full evidentiary hearing via video conference in which both USADA and Respondent were present and participated with the assistance of counsel. There was no court reporter, and the Parties agreed that the Arbitrator's confidential notes would serve as his record of the hearing for the purposes of writing a reasoned award.

30. By agreement of the Parties and without modifying the burden and standard of proof in anti-doping proceedings, Sgt. Coleman (Respondent) was called as the first witness, as if Respondent were proceeding with Respondent's case on direct examination. Counsel for USADA cross-examined Sgt. Coleman, and USADA,

thereafter, proceeded with the remainder of Claimant's case on direct examination.

31. During the hearing, the Parties called witnesses to testify. Each Party was afforded the opportunity to ask questions of the witnesses and did so as they considered necessary.

32. The Arbitrator heard from the following witnesses, all of whom were sworn:

For Claimant:

Tammy Hanson
Dr. Matt Fedoruk

For Respondent:

Sgt. Ellis Coleman
Aaron Sieracki
Lt. Col. Jason Barber

33. The Parties' exhibits were admitted into evidence at the start of or during the hearing without objection.

34. The Parties provided opening and closing statements, gave arguments, and presented their positions on various issues that arose during the hearing.

35. The Parties chose not to submit post-hearing briefs.

36. Pursuant to Rule 26 of the Arbitration Procedures, the rules of evidence were not strictly enforced.

37. The hearing lasted one (1) day.

38. At the conclusion of the hearing, the Arbitrator inquired of the Parties whether they had "… any further proofs to offer or witnesses to be heard." (Protocol, Annex C, Rule 30). The Parties indicated that they did not.

39. The Arbitrator declared the hearing closed on July 28, 2022.

VIII. APPLICABLE LAW

40. Respondent and USADA stipulate that this arbitration is governed, *procedurally and substantively*, by the Protocol for Olympic and Paralympic Movement Testing ("USADA Protocol") and is applicable to Respondent and to *Sample #152073V*, collected out of competition on December 15, 2021. (R-7, p. 009; *See* R-10).

41. The World Anti-Doping Code ("Code") is incorporated into the USADA Protocol. (C-13; R-10). The World Anti-Doping Agency ("WADA") Prohibited List is also applicable in this matter. Pursuant to the WADA Prohibited List, DHEA is a non-Specified Substance which is prohibited at all times, in and out of competition.

42. Respondent is a member of USA Wrestling and is included in USADA's registered testing pool ("RTP").

43. Articles 2.1 and 2.2 of the Code proscribe the presence and use of prohibited substances, respectively, and apply a strict liability standard, meaning athletes are responsible regardless of fault or knowing use.

> **2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample**
>
> 2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.
>
> [Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability." An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]
>
> **2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method**
>
> 2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.
>
> [Comment to Article 2.2: It has always been the case that Use, or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted

> Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]

44. An athlete's fault is taken into consideration, under Article 10 of the Protocol, in determining the consequences of the ADRV. In pertinent part, it reads:

> **10.2 Ineligibility for Presence, Use or Attempted Use or Possession or Prohibited Method**
>
> The period of *Ineligibility* for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:
>
> 10.2.1 The period of *Ineligibility*, subject to Article 10.2.4, shall be four (4) years where:
>
> 10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. [Italics in original].
>
> [The Comment to Article 10.2.1.1 reads:] While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.] [Italics in original].
>
> 10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two years.
>
> 10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance. [Italics in original].

[Comment to Article 10.2.3: Article 10.2.3 provides a special definition of "intentional" which is to be applied solely for purposes of Article 10.2.]

10.6 Reduction of the Period of *Ineligibility* based on *No Significant Fault or Negligence*

***

10.6.2 Application of *No Significant Fault* or *Negligence* beyond the Application of Article 10.6.1

If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, 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 Article may be no less than eight years.
[*Italics* in original].

[Comment to Article 10.6.2: Article 10.6.2 may be applied to any anti-doping rule violation, except those Articles where intent is an element of the anti-doping rule violation … or a range of *Ineligibility* is already provided in an Article based on the *Athlete* or other *Person's* degree of *Fault*.] [*Italics* in original].

10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

> In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.
>
> [Comment to Article 10.10: Nothing in the Code precludes clean Athletes or other Persons who have been damaged by the actions of a Person who has committed an anti-doping rule violation from pursuing any right which they would otherwise have to seek damages from such Person.]

IX. BACKGROUND AND FACTUAL SUMMARY

45. The Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceeding. This Award, however, only refers to the submissions and evidence necessary to explain the Arbitrator's reasoning. The facts presented or relied upon may differ from one side's or the other's presented version, and that is the result of the Arbitrator necessarily having to weigh the presented evidence in providing the basis for and in coming to a decision as to the award.

46. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced during the pendency of this arbitration proceeding. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

47. The Parties have stipulated that USADA collected the urine sample designated as USADA urine specimen number 152073V, *out-of-competition* on December 15, 2021. The Parties agree that each aspect of the sample collection and its processing was conducted appropriately and without error. (R-10).

48. Via the Stipulation, Respondent does not contest the validity of the testing results which led to the Adverse Analytical Finding as referenced in the *Notification of Potential Anti-Doping Violation—Sample #152073V*, dated February 28, 2022 (the "Notification"). (R-7, p. 009).

49. Respondent's Provisional Suspension began on February 28, 2022. (R-10).

50. Respondent admits that he used a nutritional supplement, Neupanex, which clearly listed the prohibited anabolic agent DHEA as an ingredient. (R-8).

Respondent stated that, since receiving the Notification, Respondent has ceased using Neupanex.

51. The Parties gave varying accounts of Respondent's career, none of which have any impact on the outcome of this dispute. The Parties agree that Respondent is a 30-year-old elite athlete who serves in the US Army and is a member of the Army's World Class Athlete Program. USADA described him as a wrestler who has been a member of USA Wrestling since 2008. (C-1).

52. Respondent stated that he first joined the US Army in late 2014. USADA reported that Sgt. Coleman has had three (3) stints in USADA whereabouts pools since 2010, totaling over nine (9) years. (C-2).

53. Since 2010, Respondent has been drug tested over 25 times. (C-3). Prior to the Adverse Analytical Finding here, Respondent has never tested positive for a prohibited substance. The Arbitrator has taken notice of Respondent's impressive athletic career, his history of drug testing, and his aspirations toward competing in the upcoming Olympic games and ultimately becoming a coach.

54. Respondent has sustained several traumatic brain injuries (TBIs). (R-1). He testified that these continue to cause him a great deal of pain, and he continues to receive medical treatment to address the effects of these TBIs and related health issues. Respondent's primary care medical provider is a Physician's Assistant, Lt. Col. Jason D. Barber. (R-2).

55. Respondent explained that, in 2020, he learned about an over-the-counter supplement called "Neupanex" from Respondent's coach, Aaron Sieracki ("Mr. Sieracki). Mr. Sieracki recommended the product to Respondent and expressed the hope that it would be useful to Sgt. Coleman and other members of the US team who also suffered TBIs. Testimony established that many in the Army's World Class Athlete Program were hopeful about the supplement and its potential to provide relief to people with TBI.

56. USADA has provided Respondent formal anti-doping education over the past 12 years. The educational materials reinforce the message that one of the risks associated with the consumption of nutritional supplements is the ingestion of prohibited chemicals.

> Bottom line—if you're going to take dietary supplements, know that you're doing so at your own risk. Read the labels, know what you're looking for, and understand that substances not listed on the label may still be in the product.

(*Athlete's Advantage*, C-5, p. 009).

57. Respondent took and passed the *2021 Returning Athlete Quiz* as a part of his ongoing training on anti-doping. One of the questions in the quiz specifically stated that "If athletes choose to use supplements despite the known risks, USADA currently recognizes **NSF Certified for Sport** as the third-party program best suited for athletes." (C-5, p. 099).

58. Respondent, therefore, was on notice of a resource recognized by USADA to assist athletes in a situation exactly as that in which Respondent found himself—i.e. determining whether a dietary supplement contained a prohibited substance. Moreover, Respondent was on notice that the principle of strict liability states that athletes are responsible for everything that goes into or on their bodies, whether the ingestion of a prohibited substance is intentional or not. (*Id.*, p. 100).

59. The educational materials expressly and specifically warn athletes that "it isn't enough to ask a fellow athlete or team doctor about what is prohibited. In all circumstances, you must do you own due diligence, as you are personally responsible for what's in your body at all times." (*Id.*).

60. On the day after completing USADA anti-doping training, and prior to consuming Neupanex, Respondent asked his primary care provider, Lt. Col. Jason Barber ("Lt. Col. Barber"), whether Neupanex was legal—that is, whether there was any prohibited substance in the supplement. (R-3).

61. At the hearing, Respondent explained that he assumed that Lt. Col. Barber knew about the USADA rules. Lt. Col. Barber replied by text:

> It reads really well. It does say the product is *3rd party tested* [emphasis added]. It's fairly expensive but I was almost thinking of trying it myself. Let me see what kind of money we might get here soon and see if we can't get you and a couple other significant TBI peeps to do a month or two of it. Sound good?

(R-4).

62. In response, Respondent stated that he had already purchased the product but had not yet used it. (R-5). Lt. Col. Barber responded, "Oh wow! Well give it a try." (R-6). Sgt. Coleman took the response from Lt. Col. Barber as an endorsement of the product.

63. Based on Lt. Col. Barber's response and believing that using Neupanex would not constitute a violation of the USADA's rules, Respondent began to occasionally use Neupanex when he had headaches.

64. At the hearing, Lt. Col. Barber stated that it was his fault that Sgt. Coleman ingested the prohibited substance. Lt. Col. Barber stated that, it was an oversight on his part to not have dissected all of the listed ingredients on the product. Lt.

Col. Barber explained that he mistakenly believed that *3rd-party tested* meant that there were no prohibited substances in the product. (R-2). Lt. Col. Barber further testified that he did not know of the organization, NSF Certified for Sport, at the time—the only 3rd-party testing program recommended by the USADA.

65. Sgt. Coleman conceded in testimony that he did not read the ingredients printed on the label of the supplement package, and instead, he relied completely on Lt. Col. Barber's medical advice.

66. DHEA was listed as an ingredient in Neupanex. If Respondent had read the label, he would have seen that DHEA was an ingredient.

67. The USADA website contains express warnings about DHEA, which it describes as "prohibited at all times for all athletes, even if it is prescribed by a doctor and regardless of whether it is natural or synthetic. … even if it is consumed through a dietary supplement." (C-6).

68. On February 28, 2022, Sgt. Coleman received the Notification from the USADA (R-7) of an adverse finding for a prohibited substance. Upon receipt of the Notification, he spoke to Lt. Col. Barber. It was only after this conversation that Lt. Col. Barber discovered that Neupanex contained DHEA.

69. Respondent cooperated with the USADA's investigation. On March 21, 2022, Sgt. Coleman sent a letter to USADA advising the USADA that he believed that his use of Neupanex had caused the adverse finding. (R-8).

70. On March 25, 2022, Respondent received a letter from USADA stating:

> USADA charges you with anti-doping rule violations ("ADRVs") for the presence of an anabolic agent of exogenous origin in your urine Sample and for the use and/or attempted Use and/or attempted Use of an anabolic agent pursuant to Articles 2.1 and 2.2 of the UWW Anti-Doping Rules and Articles 2.1 and 2.2 of the Code, which have been incorporated into the Protocol. (See Exhibit R-9).

(R. Brief at 4).

X. ANALYSIS AND DISCUSSION OF THE MERITS

A. A Violation of the Anti-Doping Protocol Has Occurred

71. As stated above, it is undisputed that Respondent used a nutritional supplement containing DHEA, and that his sample tested positive for DHEA, a prohibited anabolic agent of exogenous origin. Respondent admits that he committed an ADRV. (Respondent Pre-Hearing Brief, page 4; R-10). Accordingly, the USADA has met its burden of proof that an ADRV occurred.

B. The Violation Was Not "Intentional"

72. USADA does not contest that Respondent has established that his violation was not "intentional." (USADA Pre-Hearing Brief, Sections I and III). As indicated above, the Parties have agreed that the maximum penalty that Respondent could receive is the two (2)-year period of ineligibility.

73. The Arbitrator has noted Respondent's testimony that he consumed the product to treat his TBI symptoms and not to achieve an athletic advantage. Respondent was not in competition when the testing occurred. Accordingly, the Arbitrator finds that Respondent has met his burden of proof that the ADRV was not intentional. (Code 10.2.2 and 10.2.3).

C. Respondent Does Not Prove No Significant Fault or Negligence in Ingesting DHEA

74. The core issue is whether, under Article 10.6.2 of the Code, Application of No Significant Fault or Negligence, Respondent's penalty can be reduced. The Parties agree that, if Respondent can establish both *no significant fault or negligence* and a *reduced degree of fault*, the Arbitrator may reduce the Respondent's penalty down to a minimum of 12 months. (C-13, Article 10.6.2).

1. Respondent Failed to Meet the Minimum Requirement for a Finding of No Significant Fault.

75. Testimony at the hearing established that Respondent did not even read the label listing the ingredients prior to consuming Neupanex, and that the offending substance was expressly listed on the label. Respondent failed in his minimal duty, even though fully aware that he was strictly liable for everything that goes into his body-- whether intentional or not.

76. Sgt. Coleman offers the explanation that his "… history of TBIs … [had] a significant impact on certain [of his] cognitive abilities" and should excuse him from having "… discovered the existence of a prohibited substance in Neupanex by independently reading the list of ingredients on the product's box …; and thus, "… his cognitive limitations should be considered in determining his degree of fault." (Respondent's Brief at 11).

77. This argument or explanation is rebutted by Sgt. Coleman's admission that he had taken and successfully completed all of the online educational tutorials and quizzes associated with anti-doping training over a period of twelve (12) years, the last of which was successfully completed in 2021 shortly before he ingested Neupanex. All of the tutorials and quizzes required Sgt. Coleman's use of his cognitive abilities, and he did so successfully. The Arbitrator, having considered Sgt. Coleman's explanation, rejects it as unpersuasive as to his contention that he had no significant fault in this matter.

78. The Arbitrator finds persuasive the authority in the CAS cases to support the Arbitrator's conclusion that Respondent has not proven that he had no significant fault. In *International Ski Federation and Therese Johaug and Norwegian Olympic and Paralympic Committee and Confederation of Sports* (hereinafter "*Johaug"* or "*Johaug* Case," CAS 2017/A5015 and CAS 2017/A5110 (21 Aug. 2017) (C-17, p. 672-706). *Johaug*, citing CAS 2013/A/ 3327, set forth "… considerations as to the "objective" and "subjective" tests levels of fault. (C-17, ¶ 179, p. 697). *Johaug* cited the following language, approvingly, from CAS 2017/A5015:

> *"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.*
>
> *[…]*
>
> *70. […]*
> *aa) The objective element of the level of fault*
>
> *At the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.*" [Italics in original].

(*Johaug,* C-17, ¶ 179, p. 697).

79. The *Johaug* Panel noted, in applying the above-cited considerations, "… that an athlete may not always be expected to follow all the steps outlined in CAS 2013/A/3327 … in every circumstances … [; however,] Ms. Johaug did not perform the most important of them … [S]he did not conduct even a cursory check of the label." (*Id.* at ¶ 180, p. 697).

80. In the instant matter, Sgt. Coleman contends that he

> … took intentional and reasonable steps to ensure that there was no significant risk in utilizing Neupanex. [He further contends that] [h]is behavior was not that of an individual who engaged in conduct which he knew constituted a violation or who knew there was significant risk that the conduct might

> constitute a violation and nevertheless manifestly disregarded that risk.

(Respondent's Brief at 9).

81. The fact is, however, that Sgt. Coleman did not even read the label on which it was printed that DHEA was contained in the dietary supplement. Like Ms. Johaug, Sgt. Coleman does not meet the minimum criteria for a finding no significant fault based on the facts in this record. Indeed, the evidence proves a lack of due diligence on the part of Sgt. Coleman. Pursuant to Article 10.2.2, Sgt. Coleman's period of ineligibility cannot be reduced from two (2) years under Article 10.6.

2. Respondent's Responsibility for What He Ingests May Not Be Delegated.

82. It is clear from this record that Respondent's health-care team did not have the knowledge or expertise to adequately advise Respondent about the ingestion of the dietary substance involved in this matter. It is equally clear that under the standard of care established by USADA, Respondent knew or should have known that he could not transfer his duty of care (i.e., strict liability) from himself to anyone else whatever the degree of expertise of his medical team.

83. Respondent recognized that his consumption of a nutritional supplement was not without risk and sought the advice of his primary care medical provider. This conferral was not, however, sufficient to fulfill Sgt. Coleman's responsibilities under the Code. At the Hearing, it was established that, had Respondent simply read the ingredients for himself and compared them to the list of prohibited items – a task that would have taken minutes – he would have easily discovered that the supplement contained a prohibited item.

84. DHEA was expressly listed as an ingredient in Neupanex. DHEA is a on the WADA Prohibited List, which is incorporated into the USADA Protocol, and is prohibited at all times (in and out of competition, with and without a prescription).

85. Here, Respondent was ultimately responsible for every substance that he ingested, and this was a duty that could not be delegated to a third party, like his primary care provider or medical team.

86. The Arbitrator notes that Sgt. Coleman has received training from the USADA on how to keep himself safe from prohibited substances. His training taught him that any professional advice related to supplements would not be useful as defense in the event that the advice was faulty. When Sg. Coleman ingested Neupanex, he assumed the risk that he was consuming a prohibited substance. That risk was not eliminated or mitigated by his having conferred with Lt. Col. Barber on whose advice Sgt. Coleman relied.

87. At no time did Respondent contact an individual with sufficient anti-doping experience to advise him on Neupanex, contact USADA to ascertain the prohibited status of the supplement or any of its ingredients, utilize the Global DRO to check the supplement ingredients, or conduct a basic internet research that would have provided him authoritative information about the supplement.

88. The attempted defense of delegation and reliance on another is not without precedent. In *Johaug*, the violator, Ms. Johaug, defended her ingestion of a prohibited substance based on her having relied on the expertise of her medical doctors. They were described as having "significant expertise" in anti-doping in sports. Significantly, the expertise of Ms. Johaug's medical advisor is to be contrasted with the lack of expertise of Lt. Col. Barber in the instant matter. The degree of expertise, however, is of no moment in the analysis of the fault of the athlete.

89. "Ms. Johaug … argued that she was permitted to delegate her anti-doping responsibilities to a third party, and that the fault to be assessed is not that made by the delegate but the fault made by her in her choice of delegate." (C-17, ¶ 194, p. 700; [citations omitted]). Essentially, Ms. Johaug relied on the reasonableness of her reliance on her medical team.

90. The *Johaug* Panel rejected Ms. Johaug's argument writing, "[i]t has been consistently held in CAS decisions that an athlete cannot delegate his or her responsibilities to avoid doping." (*Id.*, ¶ 195, p. 700).

91. By analogy, the argument implied by Respondent in the instant matter, too must be rejected. According to Sgt. Coleman, by relying on Lt. Col. Barber's advice, Sgt. Coleman was merely following the strict line of authority and responsibility along which orders are passed within a military unit and between units—i.e., the military chain of command. Sgt. Coleman's placement in that hierarchy determined his level of authority and responsibility. In other words, Sgt. Coleman was ordered to devote his attention, resources, and time to training in his sport of wrestling. He was further ordered by the Army to rely on Lt. Col. Barber and others on the medical team to inform Sgt. Coleman of what was alright to ingest.

92. The *Johaug* Panel rejected this line of argument noting that Ms. Johaug asserted "… that she conducted herself in accordance with her contractual obligations, which was to seek and follow the advice of the team doctor. Ms. Johaug's contract requires her to "*comply with advice and guidance given by NSF's doctor/medical support team"* (*Id.*, ¶ 200, p. 700, [emphasis in original]).

93. In *Johaug*, the Panel's response was direct and pithy. "Ms. Johaug's contract certainly does not require her to abandon her personal duty of care." (*Id.*). Similarly, the military-chain-of-command did not require Sgt. Coleman to abandon his personal duty of care—i.e., strict liability.

94. The conclusion in *Johaug* is clear precedent for the conclusion reached by this Arbitrator in the instant matter. In pertinent part, the *Johaug* Panel wrote:

> By failing to simply check the label, it is clear that Ms Johaug did not exercise the utmost caution. Relying on the assurances of the team doctor without any further steps indicates that she did not exercise caution to the greatest possible extent – there were numerous other things, such as checking the label and conducting an internet search, that Ms Johaug could easily have done.

(*Johaug*, C-17, ¶ 200, p. 701).

95. As in *Johaug*, the Arbitrator, in the instant matter, finds that Sgt. Coleman's "… conduct [, in relying on Lt. Col. Baker,] does not warrant a finding of No Fault." (*Compare Id.*, ¶ 203, p. 701).

96. Accordingly, the ineligibility period shall last for twenty-four (24) months, from February 28, 2022 until February 28, 2024.

97. The Arbitrator concludes that Respondent has not established that he had no significant fault or negligence. Indeed Respondent showed an acute lack of diligence. Respondent does not meet his threshold burden of establishing "no significant fault or negligence. *See USADA v. Bailey*, CAS 2017/A/5320 (Nov. 30, 2017) (C-14) and *USADA v.* Downing, AAA Case No. 01-21-0016-9375 (Arb. Gary L. Johansen, May 2, 2022) (C-15).

98. The Arbitrator, therefore, does not reach an analysis or a consideration of Respondent's degree of fault even given his lack of diligence. The Arbitrator does not conduct an analysis of *Cilic v. ITF,* CAS 2013/A/2237, the seminal case providing a framework for determining an athlete's sanction based on degree of fault.

D. Disqualification of Results from December 15, 2021, Onward

99. Pursuant to Article 10.10 of the Code, "all … competitive results of the Athlete obtained from the date a positive Sample was collected … through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all the resulting Consequences including forfeiture of any medals, points, and prizes." In accordance with this, USADA has requested the disqualification of any results obtained by Respondent from December 15, 2021 to February 28, 2022. This has not been contested by the Respondent, who was not in competition during the testing.

100. The violation has been established. The Arbitrator, therefore, hereby directs that, pursuant to Article 10.10 of the Code, the forfeiture of any medals, points, and

prizes obtained by Respondent from December 15, 2021 through the ineligibility period shall continue as initially ordered.

XI. AWARD

Having heard the evidence and the arguments of the Parties, the Arbitrator awards as follows:

A. The Arbitrator has jurisdiction over this dispute.

B. Respondent, Sgt. Ellis Coleman, has committed anti-doping rule violations under Article 2.1 and 2.2 of the Code.

C. Respondent did not intentionally violate the anti-doping rules under Article 10.2 of the Code; and therefore, the default or starting period of ineligibility for the anti-doping rule violation is two (2) years.

D. Respondent has not sustained his burden of proof under Article 10.6.2 of the Code that he was not significantly at fault or negligent; therefore, Respondent does not qualify for a reduction in his period of ineligibility of two (2) years.

E. The start-date of Respondent's period of ineligibility is the date of his provisional suspension, February 28, 2022, and the period of ineligibility expires on February 28, 2024.

F. The forfeiture of Respondent's competitive results, including any award of medals, points, and prizes, from the day after his positive test on December 15, 2021, and the day prior to his provisional suspension on February 28, 2022, shall continue as initially ordered.

G. The Parties shall each bear their own respective attorneys' fees and costs associated with this Arbitration.

H. The administrative fees and expenses of the American Arbitration Association totaling $6,345.00 shall be borne as incurred, and the compensation and expenses of the arbitrator totaling $8,823.07 shall be borne as incurred.

I. This Award shall be in full and final resolution of all claims and counterclaims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: August 25, 2022
Columbia, MD

Homer C. La Rue

Homer C. La Rue
Arbitrator

XII. AFFIRMATION

I, Homer C. La Rue, being admitted to practice in the courts of New York, Maryland, and the District of Columbia, understand the penalties for perjury, and I affirm that this document is my Award, and that the signature affixed above is mine.

Date: August 25, 2022

Homer C. La Rue

Homer C. La Rue
Arbitrator