



FIVB

Disciplinary Panel

Decision

In the matter of
Ms. Erika Isabel ASENCIO SORIANO
(DOM)

4 February 2019

THE FIVB DISCIPLINARY PANEL

constituted in accordance with Article 8.1.2
of the FIVB Medical and Anti-Doping Regulations 2017
and composed by

Ms. Sabinah Clement, Chair	(British Virgin Islands) Disciplinary Panel Chairperson
Ms. Margaret Ann Fleming	(Scotland) Disciplinary Panel Vice-Chairperson
Dr. Manfred Holzgraefe	(Germany) Medical Commission Member

at the hearing which took place via telephone conference
on 19 December 2018, 3 pm Swiss Time, heard the case identified as n. 4336112:

FACTUAL BACKGROUND

1. On 20 September 2018, the FIVB was notified by the WADA-accredited Laboratory in Los Angeles, California, United States (“Laboratory”) regarding an Adverse Analytical Finding for the A-sample 4336112, which contained the prohibited substance S1.1A Exogenous Anabolic Androgenic Steroid/trenbolone metabolite epitrenbolone (“Epitrenbolone”).
2. The above-mentioned urine sample was taken in-competition on 8 September 2018 in Miraflores, Peru at the Under-20 Volleyball Women’s Final Four (“Tournament”) and belongs to the athlete Ms. Erika Isabel ASECIO SORIANO (Dominican Republic, born 02.04.2000; “Athlete”).
3. The FIVB contacted the Federación Dominicana de Voleibol (“FEDOVOLI”) on 1 October 2018 to inform the Athlete that she was provisionally suspended with immediate effect and that she had the right to request the analysis of the B sample by 8 October 2018 and to attend the opening thereof.
4. On 2 October 2018, FEDOVOLI acknowledged receipt of the FIVB’s letter and stated that it would investigate the circumstances of the Athlete’s Adverse Analytical Finding.
5. On 3 October 2018, FEDOVOLI informed the FIVB that the reason behind the Player’s Adverse Analytical Finding was that the Athlete had consumed beef steak at lunch

during a layover at the airport in Mexico City, Mexico. The beef was likely contaminated with Epi trenbolone, which is commonly used to help cattle grow in Mexico. FEDOVOLI also noted that the Athlete was 18 years old and, thus, required the assistance of FEDOVOLI in the present proceedings.

6. On 5 October 2018, the FIVB acknowledged receipt of FEDOVOLI's communication and requested the following additional information: 1) the date when the meat was consumed; 2) the name of the hotel-restaurant where the meat was consumed and 3) receipts demonstrating the purchase of the meat in question.
7. On the same day, the FIVB requested the Laboratory to confirm the concentration of the substance found in the Athlete's sample and whether the presence of said substance could have been due to contaminated meat.
8. Later that day, the Laboratory confirmed that the estimated concentration of Epi trenbolone was 0.78 ng/mL and that *"[a]lthough trenbolone is used in animal husbandry we are not aware of any cases where trenbolone positive was attributed to contaminated meat."*
9. On 6 October 2018, FEDOVOLI confirmed receipt of the FIVB's email, noted that there were national holidays in the Dominican Republic and that it would immediately carry out the necessary information in order to provide the information requested by the FIVB.
10. On 14 October 2018, FEDOVOLI provided the requested information informing the FIVB that 1) the meat was consumed by the Athlete on 4 September 2018, 2) the restaurant were Subway and Toks and 3) FEDOVOLI was trying to obtain the receipt from Toks as the Athlete did not keep the receipt. Additionally, FEDOVOLI attached 1) a copy of the Athlete's passport; 2) a copy of the Athlete's passport pages with the stamp of departure from Santo Domingo, Dominican Republic and entry into Mexico at Benito Juarez International Airport; 3) a copy of the Athlete's electronic ticket and 4) receipts for food from Subway restaurant.
11. On 16 October 2018, the FIVB acknowledged receipt of FEDOVOLI's email dated 14 October 2018. It requested a copy of the receipts for Toks restaurant by no later than 31 October 2018. Additionally, it referred to its previous communication dated 1 October 2018 in which it asked whether the Athlete wished to have her B Sample

analysed. The FIVB provided a deadline of 19 October 2018 for the Athlete to provide her answer related to the B Sample.

12. On 23 October 2018, FEDOVOLI responded by stating the following: 1) as previously stated, the meat was consumed on 4 September 2018 at the Benito Juarez International Airport in Mexico City; 2) the restaurant names were Toks and Subway but FEDOVOLI was unable to obtain the receipts from Toks; 3) the Athlete requested that the FIVB proceed and open the B Sample for analysis and 4) FEDOVOLI requested the FIVB to explain the fact that two players were tested during the competition from her team who consumed the same meat but only one tested positive.
13. By email dated 24 October 2018, the FIVB requested the Laboratory to open and analyse the B sample. Additionally, the FIVB requested an independent observer.
14. By email on the same date, the Laboratory informed the FIVB that the opening and analysis of the B sample would be completed by no later than 30 October 2018.
15. On 25 October 2018, the FIVB informed the Athlete and FEDOVOLI that it had been in contact with the Laboratory, which had informed the FIVB that the analysis would be conducted within the next week, and that they would be informed of the results once the FIVB received them.
16. On 26 October 2018, the Laboratory submitted the results of the B Sample analysis on ADAMS.
17. On 6 November 2018, FIVB provided the Athlete with the B sample analysis report and requested that the Athlete inform the FIVB by 13 November 2018 as to whether she wanted an in person hearing or a teleconference hearing on 29 November 2018 at 3 PM. Additionally, it also requested that if the Athlete wished to provide her formal position or supplement the documentation that she provided, she should do so by 20 November 2018.
18. On the same day, FEDOVOLI requested the FIVB to ask the Laboratory to provide the concentration level for the samples. Additionally, it reiterated that all of its national team members had lunch at Subway restaurant at Benito Juarez International Airport in Mexico City consuming barbecue ribs. Additionally, the team ordered meat sandwiches to take with them on their travel to Peru.

19. On 7 November 2018, the FIVB acknowledged receipt of the FEDOVOLI's email and noted that the Athlete requested the concentration level of the substance found in her B Sample. The FIVB informed FEDOVOLI and the Athlete that it would contact the Laboratory and provide them with the answer as soon as possible.
20. On 9 November 2018, the FIVB informed the Athlete and FEDOVOLI that the estimated concentration of Eptrenbolone in the Athlete's B Sample was 0.8 ng/mL.
21. On 14 November 2018, the FIVB noted that the Athlete failed to provide an answer as to whether or not she wished to attend the hearing by teleconference or in person. The FIVB reiterated its request for this information as well as requested a list of the persons that would be attending the hearing.
22. On 21 November 2018, FEDOVOLI submitted a letter from the Athlete regarding her Adverse Analytical Finding in Spanish.
23. On the same day, the FIVB acknowledged receipt of the Athlete's letter, requested an English translation and requested the Athlete to inform it as to whether she would participate in the proceedings.
24. Later that day, FEDOVOLI requested that the hearing be held on either 28 or 30 November 2018 as the Athlete had an admission examination on 29 November 2018. It also informed the FIVB that the Athlete, Mr. Cristobal Marte Hoffiz and Ms. Indhira Ramirez would attend the hearing by phone. FEDOVOLI also provided a translation of the Athlete's letter in English as follows:

"In attention to the request received by the Dominican Volleyball Federation, throughout this letter we present the details of the case concerning the anti-doping test performed to me and its adverse result, during my participation in the Final Four U20 Championship, held in Lima, Peru on 4-10 of September 2018.

While traveling from Santo Domingo , Dominican Republic to Lima, Peru, being in transit at the airport in Mexico, city, our team had lunch in a restaurant at the airport and we eat BBQ ribs, and also we took sandwich for the travel to eat in the airplane since it was going to be a 6 hour flight.

During the competition I was selected together with one of my teammate for the anti-doping test, being the first time that I have been tested. I followed the instructions of the delegate and medical staff that took the sample of my urine.

I have been notified by the Executives of the Dominican Republic Volleyball Federation that the sample that were taking resulted positive. I understand , according to the information received, that the substance found in my urine is commonly used in Mexico for the growth of animals, so I appreciate to investigate this situation because I never have consume any prohibit substance that could put in danger my health.

I remain at your disposal for any information that may be needed.” (sic)

25. On 21 November 2016, the Player sent an email apologising to the FIVB Disciplinary Panel for her absence at the hearing
26. On the same day, the FIVB replied informing her that it would provide her with a new date for the hearing shortly.
27. On 26 November 2018, the FIVB noted the content of the Athlete’s email and the translation of her statement. Regarding the request to change the hearing date, the FIVB would discuss her request with the Panel and revert back to her as soon as it received a response.
28. On 27 November 2018, the FIVB informed the Athlete of the Disciplinary Panel’s decision to postpone the hearing to 19 December 2018 at 3 PM (Swiss time).
29. On the same day, FEDOVOLI confirmed receipt of the FIVB’s communication and the date and time of the hearing.
30. On 19 December 2018, the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the Athlete and Ms. Indhira Ramirez from FEDOVOLI, the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB Legal Advisor Dr. Heiner Kahlert and the FIVB Legal Affairs Manager Mr. Stephen Bock.
31. During the hearing, the Athlete’s first reiterated the contents of her written statement, i.e. that the Adverse Analytical Finding was due to meat contamination

which occurred during her layover in Mexico City on her way to the Tournament in Peru. She stated that she ate meat for lunch while in Mexico. Additionally, she stated that this was the first time that she had been tested in her career and had never taken anything that would harm her health. She was aware that farmers use the substance in Mexico to grow their cattle, and she thinks that meat might have been contaminated given that the concentration was less than one nanogram.

32. Subsequently, the members of the Panel, the FIVB Legal Affairs Manager and the FIVB Legal Advisor asked the Athlete some questions, which revealed the following information:

- The Athlete noted that all of the players on her team ate from the same restaurant and that one other player was tested. That player tested negative whereas the Athlete tested positive;
- The Athlete had never been subject to an anti-doping test before the test in question in the present proceedings;
- The Athlete had not received any medical injections lead up to the Tournament, i.e. from three to four weeks prior to the Tournament to the team's departure;
- The Athlete confirmed that she had received some anti-doping education (having completed the FIVB Play Clean Programme on 7 March 2017) through FEDOVOLI explaining the types of products that she could or could not take;
- FEDOVOLI stated that its coaches normally did not allow their players to eat meat in Mexico but, in this case, the coaches allowed the players to eat meat because they thought that the meat would be safe as they thought that there would be stricter regulations at the airport than elsewhere in Mexico. The coaches were subject to anti-doping education programmes;
- FEDOVOLI claimed that the other players did not consume as much meat as the Athlete;
- The Athlete claimed that she had three barbecue rib sandwiches from Subway, taking at least one sandwich which she consumed on the plane to

Peru, and she could tell that they were beef, not pork, ribs because of the taste;

- The entire team also consumed barbecue rib sandwiches from Subway, and she could not explain why this was not reflected in the receipts provided by FEDOVOLI;

33. The Athlete concluded the hearing by stating that:

- She wanted to clear her name and
- She trusted the Panel to take the right decision.

LEGAL CONSIDERATIONS

34. According to the WADA 2018 Prohibited List, the substance Trenbolone and its metabolites, including epitrenbolone, are included in the category S1.1A Exogenous Anabolic Androgenic Steroids and are prohibited at all times (in-and out-of-competition). In this case, the Panel notes that the presence of Epitrenbolone was found in the Athlete's A and B Sample. Therefore, the analysis of the samples resulted in an Adverse Analytical Finding.

35. According to Article 2.1 of the FIVB Medical & Anti-Doping Regulations 2017 ("FIVB MADR"), the presence of a prohibited substance or its metabolites in an athlete's bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB MADR.

36. The above-mentioned sample (Nr. 4336112) belongs to the Athlete.

37. No Therapeutic Use Exemption exists in this case as per Article 4.4 of the FIVB MADR.

38. The Athlete has not contested that an anti-doping rule violation has occurred. Rather, she seeks to have her sanction reduced because she claims her anti-doping rule violation was not intentional. The Panel notes that the Athlete tested positive for Epitrenbolone, which is considered a Category S1 substance.

39. According to Article 4.2.2 of the FIVB MADR, all prohibited substances are deemed specified substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Category S1 is the category for anabolic agents and,

consequently, the prohibited substance in the case at hand (Epidrenbolone) is not considered a Specified Substance.

40. The FIVB Disciplinary Panel notes that the period of ineligibility for a violation of Article 2.1 FIVB MADR concerning a non-specified substance shall be as follows:

- four (4) years when the anti-doping rule violation does not involve a Specified Substance, unless the Athlete can establish that the anti-doping rule violation was not intentional (Article 10.2.1.1 FIVB MADR);
- two (2) years if the Athlete can establish that the anti-doping violation was not intentional (Article 10.2.2 FIVB MADR).

41. The Athlete contends that her anti-doping rule violation was not intentional because she ate contaminated meat while in Mexico. Consequently, the Panel must also look at Article 10.5.1.2 FIVB MADR, which deals with Contaminated Products and states the following:

“In cases where the Athlete 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 Ineligibility, depending on the Athlete’s degree of fault.”

42. The FIVB MADR define a Contaminated Product as *“A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.”* Additionally, the FIVB MADR define No Significant Fault or Negligence as follows:

“The Athlete or other Person’s establishing that her or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered her or her system.”

43. With this framework in mind, the Panel will now examine whether the Athlete is entitled to a reduced sanction because the facts and circumstances of this case

demonstrate that her anti-doping rule violation was not intentional. In this particular case, the assertion is that the anti-doping rule violation was not intentional due to meat contamination. Thus, in order to examine intentionality in this case based on the Athlete's arguments, the Panel must also examine the merits of her contamination argument.

44. The Athlete contends that her food in Mexico was contaminated with the Prohibited Substance and that is why her anti-doping rule violation occurred. She had no idea that she was taking the substance until she received the letter informing her that her A Sample had tested positive for a Prohibited Substance.
45. In support of her assertion, the Athlete has provided her statement asserting that she might have consumed meat that was contaminated and receipts demonstrating the team's purchases while they were in the airport in Mexico City, Mexico.
46. In evaluating the evidence before it, the Panel notes first that it is common knowledge amongst the anti-doping community that meat contamination is an issue in Mexico. WADA has also issued a statement back in 2011 urging athletes to exercise caution when consuming meats in Mexico (<https://www.wada-ama.org/en/media/news/2011-11/athletes-must-show-caution-due-to-contaminated-meat-0>).
47. However, the Panel would like to highlight several key differences between the abovementioned issue and the present case. First, WADA's warning pertains to clenbuterol, which is a different substance than the substance found in the Athlete's sample. The Laboratory provided a statement confirming that it was not aware of any cases involving the substance that were caused by meat contamination. Moreover, the use of substances for the growth of animals is usually associated with cattle (see CAS 2011/A/2386). This is an important distinction when examining the veracity of the Athlete's assertions.
48. In turning to the specific assertions made by the Athlete, the Panel would like to highlight that there are several discrepancies between the Athlete's story and the evidence submitted before the Panel or from publicly available sources. First, the Athlete contended that she consumed three barbecue beef ribs sandwiches and that her teammates all consumed the same sandwich. However, this assertion is directly

contradicted by the receipts provided by FEDOVOLI, which state that only one barbecue rib sandwich was purchased at the Subway at the airport in Mexico City. When confronted with this evidence, the Athlete and FEDOVOLI were unable to provide an explanation. Second, FEDOVOLI asserted that it had told its coaches that they should not let their athletes eat meat in Mexico but their coaches did not follow this instruction in the present case. Finally, and, perhaps most importantly, an examination of the menu available of Subway restaurants in Mexico (<https://www.subway.com/es-MX/MenuNutrition/Menu/Product?ProductId=4828&MenuCategoryId=418>) states that the meat in their barbecue rib sandwiches is pork, not beef as asserted by the Athlete. Based on the above, the Panel finds that the Athlete has failed to meet her burden of proof that the presence of Epietrenbolone was due to contaminated meat and, consequently, as no other explanation was provided, that the anti-doping rule violation was unintentional.

49. The 2017 FIVB MADR is very strict when it comes to the presence of non-specified substances that cannot be shown to be unintentional. The Panel feels that this sanction is harsh given the Athlete's age and inexperience. In particular, the Panel would highlight that the Athlete may have been let down by her national federation. However, under the circumstances of the present case, the Panel is required to apply the FIVB MADR in accordance with its provisions. Consequently, the Panel has no choice but to find that the Athlete shall be sanctioned with a period of ineligibility of four (4) years. Given that the Athlete was provisionally suspended by the FIVB on 1 October 2018, this four (4) year period of ineligibility shall begin on that date and shall conclude on 30 September 2022 pursuant to Article 10.11.3 of the FIVB MADR.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Ms. Erika Isabel ASECIO SORIANO (Dominican Republic) has committed an anti-doping rule violation (presence of the prohibited substance S1.1a Exogenous Anabolic Androgenic Steroid/trenbolone metabolite epitrenbolone in her bodily specimen) according to Article 2.1 of the FIVB MADR.
2. A sanction of four (4) years of ineligibility shall be imposed on the athlete Ms. Erika Isabel ASECIO SORIANO according to Article 10.5.1.2 FIVB MADR.
3. The period of ineligibility shall start on 1 October 2018 and end on 30 September 2022 as per Article 10.11 FIVB MADR.
4. All competitive results achieved by the athlete Ms. Erika Isabel ASECIO SORIANO alone between 8 September 2018 and 1 October 2018 shall be disqualified as per Article 10.11.1.
5. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 4 February 2019

For the FIVB DISCIPLINARY PANEL



Ms. Sabinah Clement
Chair

NOTICE OF APPEALS

(doping cases)

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical and Anti-Doping Regulations 2017 (FIVB MADR) and with the provisions of the Code of Sports-Related Arbitration (see www.tas-cas.org).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 14.7 of the FIVB MADR: “Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation.”

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

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