



FIVB

Disciplinary Panel

Decision

In the matter of
Mr. Javier Ismael Rodriguez Perez
(Puerto Rico)

15 January 2020

THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2

of the FIVB Medical and Anti-Doping Regulations 2017 ("FIVB MADR")

and composed by

Ms. Sabinah Clement	(BVI) Disciplinary Panel Chairperson
Ms. Margaret Ann Fleming	(SCO) Disciplinary Panel Vice-Chairperson
Dr. Annie Peytavin	(FRA) Medical Commission Member

heard the case identified as n. 4304223:

FACTUAL BACKGROUND

1. On 12 July 2019, the FIVB was notified by the WADA-accredited Laboratory in Havana, Cuba ("Laboratory") regarding an Adverse Analytical Finding for the A-sample 4304223, which contained the prohibited substances S1.1B Endogenous Anabolic Androgenic Steroids (19-norandrosterone and its metabolite 19-NE, boldenone and its metabolite 5 β -androst-1-ene-17 β -ol-3-one) and the prohibited substance S.1.1A Exogenous Anabolic Androgenic Steroids (metandienone metabolite 17 β -methyl-5 β -androst-1ene-3a, 17a-diol and methyltestosterone metabolite 17a-methyl-5 β -androstane-3a, 17 β -diol) ("Prohibited Substances").
2. The above-mentioned urine sample was taken in-competition on 31 May 2019 in Havana, Cuba during the 2019 NORCECA Men's Challenge Cup Qualification Tournament ("Event") and belongs to the athlete Mr. Rodriguez Perez (Puerto Rico, born 15.08.1997; "Athlete").
3. On 26 July 2019, the FIVB contacted the Federacion Puertorriqueña de Voleibol ("NF-PUR") and the Athlete to notify him of the Adverse Analytical Finding ("AAF") and inform him that he was provisionally suspended with immediate effect, that he had the right to request the analysis of the B sample by no later than 2 August 2019 and to attend the opening thereof as well as the laboratory documentation package, and that he had the right to provide substantial assistance to the FIVB in accordance with Article 10.6.1 of the FIVB MADR.

4. On 29 July 2019, the Athlete requested the analysis of the B Sample and the documentation package from the laboratory.
5. On 30 July 2019, the FIVB acknowledged receipt of the Athlete's request to analyse the B Sample and informed him of his right to have a representative present at the B Sample analysis. The FIVB also informed him that it would request further information about the laboratory documentation package.
6. On the same day, the FIVB requested further information about the time of the B Sample analysis as well as the laboratory documentation package.
7. On 12 August 2019, the Laboratory informed the FIVB that the B Sample analysis would take place on 2 September 2019 and provided further information about the laboratory documentation package.
8. On the same day, the FIVB informed the Athlete that the B Sample analysis would take place on 2 September 2019.
9. On 2 September 2019, the B Sample analysis was conducted, and the results were submitted by the Laboratory on 5 September 2019.
10. On 20 September 2019, the FIVB:
 - informed the Athlete that the B Sample analysis had been conducted and provided him with the report;
 - invited the Athlete to inform the FIVB by no later than 4 October 2019 as to whether the Athlete would like to be heard either 1) in person or 2) via teleconference; and
 - invited the Athlete to provide his position by the same date.
11. On 7 October 2019, the FIVB sent an email to the Athlete referring to its letter dated 20 September 2019, noting that he failed to respond to the communication and informing him that a hearing would take place on 14 October 2019. The FIVB reiterated its request for confirmation of his presence at the hearing and for the Athlete's position. It further highlighted that his case would be decided based on the record before the FIVB Disciplinary Panel at the hearing.
12. On 8 October 2019, the FIVB called NF-PUR and asked it to contact the Athlete immediately regarding the hearing.

13. On 14 October 2019, the hearing via telephone conference was attended –aside from the FIVB Disciplinary Panel– by the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB Legal Advisor Mr. Heiner Kahlert, the FIVB Head of Legal and General Counsel Mr. Stephen Bock and the FIVB Legal Affairs Manager Ms. Amelia Moore. The Athlete did not attend nor submit his position and, thus, the FIVB Disciplinary Panel deliberated on the case based on the record before it at the time of the hearing.
14. On 13 November 2019, the FIVB reiterated its request to receive the documentation packages from the Laboratory to which the Laboratory replied that it would be unable to provide these packages until the beginning of December 2019.
15. On 10 December 2019, the Laboratory sent the documentation packages related to the Athlete's positive tests.
16. On 11 December 2019, the FIVB provided the documentation packages to the Athlete and provided him with a deadline of 18 December 2019 to make any comments. The Athlete failed to file any comments within the deadline.

LEGAL CONSIDERATIONS

17. According to the WADA 2019 Prohibited List, the substances metandienone metabolite 17 β -methyl-5 β -androst-1ene-3a, 17a-diol and methyltestosterone metabolite 17a-methyl-5 β -androstane-3a, 17 β -diol are included in the category "S1.1A Exogenous Anabolic Androgenic Steroids" and 19-norandrosterone and its metabolite 19-NE, boldenone and its metabolite 5 β -androst-1-ene-17 β -ol-3-one are included in the category "S1.1B Endogenous Anabolic Androgenic Steroids". Both of these categories of substances are prohibited in- and out-of-competition.
18. According to Article 2.1 of the FIVB MADR, the presence of a prohibited substance in an athlete's bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB MADR.
19. The above-mentioned sample (Nr. 4304423) belongs to the Athlete.
20. No Therapeutic Use Exemption exists in the case, as per Article 4.4 of the FIVB MADR.
21. Based on the above, the FIVB finds that the Athlete committed an anti-doping rule violation under Article 2.1 of the FIVB MADR because the Prohibited Substances were

present in the Athlete's Sample on 31 May 2019. Given this finding, the Panel must now determine what the period of ineligibility should be for the Athlete based on his anti-doping rule violation.

22. 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. Categories "S1.1A Exogenous Anabolic Androgenic Steroids" and "S1.1B Endogenous Anabolic Androgenic Steroids" fall into the categories of the abovementioned exception and, consequently, the Prohibited Substances in the case at hand are considered Non-Specified Substances.
23. 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 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).
24. Based on the evidence before it, the Panel finds that the Athlete has failed to establish that the anti-doping rule violation was not intentional. The Athlete has not explained the presence of the prohibited substances in his system. He failed to file an explanation as to why the presence of these substances occurred. Given the variety and nature of the substances in question and without an explanation as to how these substances entered his system, the Panel finds that he cannot prove that its presence was unintentional. Ultimately, the Athlete has a duty of care and responsibility to ensure that the substances that enter his body are not prohibited.
25. 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 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 26

July 2019, this four (4) year period of ineligibility shall begin on that date and shall conclude on 25 July 2023 pursuant to Article 10.11.3 of the FIVB MADR.

26. Finally, regarding team and individual results, the Event was a qualification tournament. The Athlete received an individual award at the Event, which must be forfeited by him.
27. The Panel notes that the relevant provisions governing the consequences of the Athlete's anti-doping rule violation on the Puerto Rican national team are found in Article 11.1 FIVB MADR, which provides, in relevant part, the following:

"Where one member of a volleyball team has been notified of an anti-doping rule violation under Article 7 during an Event Period, the ruling body for the Event...b) may decide that the team shall be subject to Disqualification from the Event or other disciplinary action...

Factors to be included in considering whether to impose any sanction on a volleyball team under this Article might include, for example, the seriousness of the Athlete's anti-doping rule violation, whether the Athlete tested negative in other games of the same Event, the extent to which the team's result(s) in the game and/or Event in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation etc." (emphasis added)

28. The Panel notes that the language provides that the Panel "may" decide to disqualify a team. An anti-doping rule violation from one player does not automatically require the player's team to be disqualified. Rather, Article 11.1 FIVB MADR provides the Panel with the discretion based on an examination of the circumstances of the case.
29. In this particular case, the Panel notes that only one player from the Puerto Rican national team has tested positive for banned substances. Additionally, while the Athlete had an impact on the Puerto Rican national team's first match of the Event, he had a minimal impact on the team's match in the Finals of the Event. As a result of the result of the final match, the Puerto Rican national team did not qualify for the 2019 Men's Volleyball Challenger Cup. Based on the above and given the overall results of the Event, the FIVB Disciplinary Panel holds that the results of the Puerto Rican national team should not be disqualified based on the Athlete's positive test.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The athlete Mr. Javier Ismael RODRIGUEZ PEREZ (Puerto Rico) has committed an anti-doping rule violation (presence of the prohibited substances "S1.1A Exogenous Anabolic Androgenic Steroids" and "S1.1B Endogenous Anabolic Androgenic Steroids" (metandienone metabolite 17 β -methyl-5 β -androst-1ene-3a, 17a-diol and methyltestosterone metabolite 17a-methyl-5 β -androstane-3a, 17 β -diol, 19-norandrosterone and its metabolite 19-NE, boldenone and its metabolite 5 β -androst-1-ene-17 β -ol-3-one)) according to Article 2.1 of the FIVB MADR.
2. A sanction of four (4) years of ineligibility shall be imposed on the athlete Mr. Javier Ismael RODRIGUEZ PEREZ according to Article 10.2.1.1 FIVB MADR.
3. The period of ineligibility shall start on 26 July 2019 and end on 25 July 2023 according to Article 10.11 FIVB MADR.
4. Mr. Javier Ismael RODRIGUEZ PEREZ shall forfeit the individual award that he received from the 2019 NORCECA Men's Challenge Cup Qualification Tournament.
5. The Puerto Rican national team's results from the 2019 NORCECA Men's Challenge Cup Qualification Tournament stand.
6. The decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 15 January 2020

For the FIVB DISCIPLINARY PANEL


Ms. Sabinah Clement
Chair

NOTICE OF APPEALS
(doping cases)

An appeal may be filed against the 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 the 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, the 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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