

Doping Hearing Panel of the Badminton World Federation

DOPING HEARING PANEL DECISION

Decision delivered on 06 September 2016

Athlete:	Ms. Sudsaifon YODPA, Thailand
Date of Hearing:	Badminton World Federation Anti-Doping Regulation 7.10 was executed – no hearing required
Place of Hearing:	N/A
The Doping Hearing Panel:	Mr. Rune B. Hansen (Chair) Dr. P.S.M. Chandran Prof. Dr. Toni Graf-Baumann
Athlete Representative:	N/A
Expert Witness:	None called
Anti-Doping Rule Violation:	Violation in terms of Article 2.1.3 of the Badminton World Federation Anti-Doping Regulations (BWF ADR, effective from January 1. 2015).

I - The Facts

1. On 07 December 2015, after a SU 5 Women's Doubles match Ms. Sudsaifon Yodpa was selected for an in-competition doping control test at the 8th ASEAN Para Games held in Singapore City, Singapore. She provided a urine sample which was collected by Singapore Asean Para Games Organizing Committee (SAPGOC). The sample was secured at 00:00am and sent for analysis (sample code 2978409) to the WADA Accredited National Dope Testing Laboratory in New Delhi, India.
2. In a lab result dated 06 January 2016, the National Dope Testing Laboratory reported presence of Nor-Sibutramine and OH-Nor Sibutramine in sample 2978409. Sibutramine is

listed under class S6. Stimulants, as a Specified Substance prohibited in competition under the 2015 WADA Prohibited Substance List.

3. It was confirmed that the athlete did not have a Therapeutic (TUE) Use Exemption in place for this Prohibited Substance.
4. On 11 January 2016, Dr. Badrul Amini b Abdul Rasid, Chair, ASEAN Para Sports Federation 8APG Anti-Doping Committee and AAF Review Panel notified Ms. Yodpa of the positive result of the sample.
5. On 25 January 2016, Ms. Yodpa requested that the B sample (B2978409) be analysed.
6. In a lab result dated 12 February 2016, the National Dope Testing Laboratory again reported the presence of Nor-Sibutramine and OH-Nor Sibutramine in sample B2978409.
7. On 13 February 2016, Ms. Yodpa was informed of the B sample analysis results. Ms. Yodpa was also informed that the required hearing would take place via teleconference on 27 February 2016 at 17:30.
8. On 18 February 2016, Ms. Yodpa confirmed that she would be present at the videoconference hearing taking place on 27 February 2016.
9. On 27 February 2016, Ms. Yodpa provided an explanation as to how Sibutramine had entered her system and believed the presence was due to the consumption of a nutritional supplement called Phytovy.
Ms. Yodpa confirmed that she had consumed the supplement on 23 and 25 November 2015 to ease constipation.
10. As part of the reasoned decision issued by the ASEAN Para Sport Federation on 15 March 2016, Ms. Sudsaifon Yodpa was requested to return the Gold medal for Women's Singles and Bronze medal for Women's Doubles.
Ms. Sudsaifon Yodpa was also notified that the ASEAN Para Sports Federation would send the matter to the Badminton World Federation (BWF) for appropriate action.

11. On 12 April 2016, BWF sent a letter to Ms. Sudsaifon Yodpa notifying her that she was provisionally suspended from competition and the possibility of sanctions as a result of an Adverse Analytical Finding (AAF). A similar letter was sent from BWF to the Secretary General of the Badminton Association of Thailand.
12. The Athlete has not competed since 07 December 2015.
13. On 29 June 2016, the results of an independent analytical study conducted by the BWF became available.
The report confirmed that the substance Sibutramine was not present in the product Phytovy.

II - THE APPLICABLE REGULATIONS

14. The Athlete was charged with a breach of **Regulation 2.1.2 of the BWF Anti-Doping Regulations (BWF ADR)**:
Regulation 2.1.2 "Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Player's A Sample where the player waives analysis of the B Sample and the B Sample is not analyzed; or, where the Player's B Sample is analyzed and the analysis of the Player's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player's A Sample; or, where the Player's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle."
15. The Athlete notes that she does not contest the presence of the Prohibited Substance Sibutramine and admits to violation of Article 2.1.
16. **Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**
Article 10.2.1 of the BWF ADR states: *"The period of ineligibility shall be four years where"*

10.2.1.1 "The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Player or other person can establish that the Anti-Doping Rule Violation was not intentional.

10.2.1.2 *"The Anti-Doping Rule Violation involves a Specified Substance and BWF can establish that the Anti-Doping Rule Violation was intentional"*.

17. The BWF Hearing Panel cannot establish that the Anti-Doping Rule Violation was intentional; therefore, **Article 10.2.1** does not apply.

18. **Article 10.2.2 of the BWF ADR** states: *"If Article 10.2.1 does not apply, the period of Ineligibility shall be two years"*.

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

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

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

20. **Burden and Standards of Proof**

Article 3.1 of the BWF ADR reads:

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

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

"once an adverse analytical finding has been established the burden of proof shifts to the athlete who has to establish on the balance of probabilities in order to escape sanction, or to obtain a reduction of the sanction, how the prohibited substance entered his system and that

he in an individual case bears no fault or negligence, or no significant fault or negligence. For the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The athlete thus needs to show that one specific way of ingestion is marginally more likely than not to have occurred."

22. Ms. Yodpa explained that she accepts that Sibutramine was present in the Sample collected "in-competition" from her on 07 December 2015, and that she has consequently committed an anti-doping rule violation under Article 2.1 of the BWF ADR. Her argument was that she had done so inadvertently and that no sanction should take place according to Regulation 10.4, or at least that a sanction should be reduced according to Article 10.5.1 of the BWF ADRs.

III - The Panel's Deliberations and Conclusions

How did Sibutramine enter the body of Ms. Yodpa?

23. Ms. Yodpa claimed that the presence of Sibutramine in her body had originated from an internet purchased supplement called Phytovy.
24. The BWF conducted an independent investigation into this product and the analysis report confirmed that Sibutramine was not an ingredient in the product Phytovy.
25. Therefore, Ms. Yodpa has not been able to successfully establish how the Prohibited Substance entered her body.
26. The panel emphasized Comment (a) Article 10.4 of the BWF ADR
Article 10.4 of the BWF ADR reads:
"If a Player or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated".
27. In this case, the *Player* cannot establish that she was not at fault and was not negligent.

IV – Reduction of the period of ineligibility based on no fault or negligence?

28. According to the *World Anti-Doping Code – Appendix 1 – Definitions*, the definition of *No Fault or Negligence* reads:
- “The Athlete or other Person’s establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.*
29. According to this definition, no significant fault or negligence pre-supposes that the Athlete must establish how the prohibited substance entered his or her system.
30. Ms. Yodpa has not been able to fulfil this condition. In fact, Ms. Yodpa has not been able to present any evidence that gives any information on how Sibutramine entered her system.
31. In the opinion of the Panel, this is a classic case where 10.2.2 is applicable. The Anti-Doping Rule Violation involves a Specified Substance, but the Anti-Doping Organisation cannot establish that the Anti-Doping Rule Violation was intentional. The period of ineligibility can therefore not be as long as four years. However, the Athlete cannot establish no significant fault or negligence.
32. The Panel concludes that neither 10.2.1 nor 10.5 are applicable.

VI - Appropriate Sanction

33. Both objective and subjective elements must be taken into consideration when deciding the degree of negligence, cf CAS 2013/A/3327 M. Cilic vs ITF.
34. In the opinion of the Panel, the negligence of Ms. Yodpa has been rather significant. She has failed to present Any explanation on how the Prohibited Substance has entered her system.
35. It is the Panels opinion that a **period of ineligibility of 24 months** is the appropriate sanction in this case, in line with Article 10.2.2.

36. According to 10.11.3 any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility imposed.

37. The Hearing Panel finds that it is correct and fair to **backdate the period of ineligibility** to the date of sample collection **07 December 2015**.

38. Each party should bear its own costs in connection with the hearing.

Conclusion

1. **Ms. Sudsaifon Yodpa is sanctioned with a period of ineligibility of twenty-four (24) months, commencing on 07 December 2015.**
2. **Each party shall bear its own legal costs and other expenses incurred in connection with this Doping Panel Hearing.**

This done and signed this 06th day of September 2016



Rune B. Hansen (Chair)

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