

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel**

<p>United States Anti-Doping Agency</p> <p>Claimant,</p> <p style="text-align: center;">vs.</p> <p>Duane Dickey,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: right;">AAA No. 30 190 00341 02</p>
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DECISION

The United States Antidoping Agency (USADA), acting pursuant to a referral from U.S.A. Cycling, the National Governing Body for the sport of cycling in the United States, brought this proceeding seeking an order suspending the Respondent, Duane Dickey, from competition. The claim is based upon the report of a positive doping test. The Respondent's specimen was tested three times: (1) an initial screen on the "A" sample by the laboratory for controlled substances; (2) upon a positive test on the first screen, a second test on the "A" sample to confirm or refute the first, screening test; and (3) upon confirmation of the positive doping result, a test on the "B" sample after notice to and the offer of an opportunity for the respondent to attend and observe the "B" sample test. The respondent declined to attend the "B" sample testing.

Applicable Rules:

While the Respondent is an U.S. athlete, this testing was done at an international competition, under the auspices of the Union Cycliste International ("UCI"), the International Federation of which U.S.A. Cycling is a member. Consequently, it is the New UCI Antidoping Examination Regulations (effective July 1, 2001) (hereinafter "UCI Regulations"), which control the substantive consideration and disposition of this case. (Joint Exhibit 1)

Facts:

The facts not in dispute are that the Respondent competed in the Vuelta de Guatemala during October 2001. During the course of that competition, specifically on October 28, 2001, the Respondent was selected for a doping control test. The specimen identified as coming from

the respondent, along with 31 other samples, were all sent to the Institut Armand-Frappier, in Montreal, Canada, for testing (the "Institute"), and received on November 9, 2001. The Institute has been certified by the International Olympic Committee ("IOC"), and is used by the UCI to conduct antidoping tests. The results of that testing were positive for the substances phentermine, boldenone and nandrolone. All of those substances are prohibited by the UCI Regulations. The Respondent admits to having voluntarily taken phentermine during the course of the competition, and that he did so for the purpose of providing him with extra energy in the mornings, a period of time during which he had been feeling tired and lethargic.

The respondent claimed that while he took the phentermine in order to give himself more energy, that he had checked a condensed version of the USADA banned substance list taken from the USADA web site, and that he did not see phentermine specifically identified. However, that list is, on its face, not complete and does indicate that stimulants, including those as common as caffeine, are generally prohibited. (Joint Exhibit 13) Moreover, the USADA list specifically directs athletes to the banned substance lists of their own sports, and it is not disputed that phentermine is on the UCI prohibited list, which controls (Joint Exhibit 2). The Respondent denied any knowledge of how the other two substances boldenone and nandrolone came to be in his system. He did not even suggest that those substances were given to him by a third party without his knowledge. Once again, the UCI Regulations control. (See, USADA Protocols for Olympic Movement Testing, Annex D, R33(c)). Article 7 of the UCI Regulations provides that it is the affirmative duty of the athlete "to ensure that they neither use any prohibited substance ... nor permit any such substance ... to be used," and that it shall not be the obligation of the laboratory or the National Governing Body to prove the source of the product, merely its presence. (See, e.g., Article 4).

The Hearing:

Respondent was ably represented by counsel, who called to testify on behalf of Respondent two witnesses, an expert witness on laboratory procedures, and a managing officer of his local cycling club in Minneapolis.

USADA presented testimony and documents sufficient to meet its burden of proving a *prima facie* case of an antidoping violation. The respondent attacked that showing on several grounds:

1. That there were irregularities in the sample collection process in Guatemala;
2. That there were irregularities in the intra-laboratory chain of custody documentation of the "A" specimen and "A" sample aliquots during the "A" sample confirmation testing; and
3. That the testing conducted by the laboratory departed from the standard operating procedures of the laboratory as certified to the IOC.

For the reasons that follow, the respondent failed to establish errors in the specimen collection, the chain of custody, or the testing process.

Sample Collection

Upon presenting his specimen for testing at the collection facility in Guatemala, the Respondent was presented with a form to certify that all procedures were properly carried out, which he signed. (Joint Exhibit 7) That form includes a place on which the respondent had the opportunity to list any deviations from proper procedure or any questions that he might have had about that procedure. Although the Respondent testified that he had been tested a number of times in the past in connection with sporting events, and appeared generally to be familiar with drug testing procedures (although claiming unfamiliarity with Bereg bottles), he listed no reservations as to the procedure. That same form included a place to list any medications or supplements taken by the respondent and, although he admitted having taken phentermine, he did not list it. When asked why he did not accurately complete the form, he merely stated that he was tired, that he wanted to leave the facility, and it just did not enter into his thinking.

Article 61 of the UCI Regulations specifically provides that:

The rider shall, by appending his signature, confirm that, subject to any comments as in the first paragraph of this Article, the test was conducted in accordance with these Regulations hence excluding the possibility of any subsequent complaint.

The respondent does not question the veracity of his signature on that form or that it is, in fact, the form he signed. He is, therefore, bound by the rule. In further point of fact, that form signed by Respondent sets out a bottle control number for the tamper proof Bereg bottles used by UCI for sample collection. The number of the specimen bottle specified on the form is the same bottle number that appears on the control documents used by the Institute to identify the specimen bottles tested.

Laboratory Chain of Custody Documentation:

When the specimen bottles were received by the Institute on November 9, 2001, they were assigned internal, laboratory control numbers. In this instance the number assigned to Respondents' specimen was 01DV1642("A" and "B"). USADA provided the Institute's chain of custody log for the "A" and "B" specimen samples, as well as a comprehensive set of documents which not only tracked the preparation and testing of aliquots prepared by the laboratory technicians (that is, samples taken from the original specimen bottles), but provided the actual test results as well. (USADA Exhibit 102) The only two issues raised by the Respondent was whether there was adequate documentation to determine a chain of custody of the aliquots within the secure laboratory facility, and whether there was a conflicting entry in the chain of custody for the original "A" specimen bottle on the second (or confirmation) test of the "A" bottle.

The testing procedure applicable to this case are those specified in the UCI Regulations, as the competition was an international one conducted under the auspices of UCI in Guatemala. Neither U.S.A. Cycling nor USADA had any involvement in either the event itself, the specimen sample collection, or the conduct of the doping control procedures at the Institute.

There is no requirement in the UCI Regulations that there be any separate or specific chain of custody log for aliquots, much less that it be on a single form. Nevertheless, the laboratory documents provided by USADA (USADA Exhibit 102) included separate documentation that established the identity of those laboratory technicians having custody of the aliquots while preparing and testing them for prohibited substances, from extraction from the original specimen bottles to the insertion into the appropriate scientific testing apparatus. This documentation was supported by testimony from representatives of the Institute.

As to the supposedly conflicting entry on the handling of the "A" specimen during the confirmation testing procedures, USADA established that there was no conflict. Respondent's claim was based upon an entry by one of the laboratory technicians which carried no date or time indicating removal of the "A" specimen from the secured storage safe, nor of the return. It was established through the testimony of the Director of the Laboratory and of the technician who handled the specimen bottle and personally made the entry in question, that the specimen bottle was handled by two laboratory technicians. The first removed the specimen bottle from the safe (and made the appropriate entry) and took one aliquot. He then handed off the specimen bottle to the second technician who extracted additional aliquots for separate testing. The second technician made an entry on the log to show her custody of the specimen bottle and the extraction of the aliquots. Times are not entered separately for the time of preparing aliquots from the specimen bottles. Upon completion of that task, she returned the bottle to the original technician, who in turn placed the specimen back in the safe and duly noted the date and time of having done so. Since the second technician did not remove or return the specimen bottle, she was not called upon to make such an entry.

Respondent raised a second question about that same entry, claiming that the log did show what appeared to be a time entry, and that it conflicted with the entry by the first technician. Through the testimony of the Director of the Laboratory and of the technician whose entry was in question, it was established that the laboratory chain of custody log covers all the specimens received in any given lot. In this case, all 52 specimens, in 104 bottles, from the Vuelta de Guatemala were covered by the same log. The entry on the line immediately preceding that in question, was made by the same technician as made the entry in question. The technician testified that she had made an error in entering the date of handling of that, different, specimen and had to correct it. However, as there was no additional space on that line to do so, her handwriting spilled over to the following line. While the paperwork may have been slightly messy as a result of the corrections, those corrections as explained under oath by the employees of the Institute, do not constitute even a "minor irregularity" in the chain of custody documentation. The corrections were appropriately done so as to assure that the log itself was accurate. The laboratory technician was present and testified at the hearing as to the security and

appropriateness of the actual chain of custody of the "A" specimen bottle and the aliquots taken therefrom and it is the actual chain of custody, not the documents, which is the controlling question.

The Testing Procedures:

Respondent questioned whether the Institute deviated from its own standard operating procedures in testing the Respondent's specimen. In doing so, the respondent implicitly focused on the conduct of the phentermine testing by the Institute. While UCI Regulations provide¹ that an IOC certified laboratory will be presumed to have complied with its approved operating procedures, USADA nevertheless presented evidence to affirmatively address this challenge. The evidence established that the Institute did follow its procedures in conducting the tests. Indeed, when directly asked, the expert witness proffered by the Respondent agreed that he had no question in his mind that the Respondent's specimen contained phentermine. Moreover, the Respondent confessed to having taken phentermine. Therefore, not only are the multiple laboratory results demonstrating the presence of phentermine thereby confirmed, but the UCI Regulations specifically state that an admission of use shall be treated as constituting a positive test for the substance. (UCI Article 134)

Penalty:

The Panel was called on to apply the UCI code in considering this aspect of the case. The appropriate sections are found in Chapter VIII of the UCI Regulations, Disciplinary Procedures. Specifically, Article 124 provides:

Within the limits set by the present regulations, the penalties imposed must be proportionate with the offence committed, taking account of both the specific details of the case in hand and the characteristics of cycle sport and its various disciplines. Therefore the following elements, inter alia, will be considered:


- The circumstances surrounding the offence,
- The character, age and experience of the transgressor,
- The gravity of the consequences of the penalty for his social, sporting and economic position,
- The risk to a professional career,
- The rider's normal discipline and programme, particularly as regards the length of the season for that discipline and the number and importance of the events.

¹Article 11: "Accredited laboratories shall be presumed to have carried out the control and monitoring procedures in accordance with the rules and standard practice and the tests of samples in accordance with acceptable current scientific standards. These assumptions may be overturned by proof to the contrary, but the laboratory shall not in the first instance be required to prove that it has carried out the procedures and tests in accordance with normal practice and standards."

Taking into account the Respondent's age, competitive level, past history, and all the other factors in this case, it is the finding of the Panel that Respondent be suspended from U.S.A. Cycling and UCI sanctioned competitions for a period of time through and including Monday, September 1, 2003.

The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne by USADA.


The parties must each bear their own legal costs.


Edward T. Colbert, Chairman

August 30, 2002
Date


Samuel Cheris

8/29/02
Date


Edward Lahcy

8/29/02
Date