

INTERNATIONAL WUSHU FEDERATION (IWUF)

DECISION OF THE HEARING PANEL

(*)

Dated July 4, 2019

In respect of the following

Adverse Analytical Finding: Sample Code (A) n. 6356687

Athlete /NF: Hamidreza GHOLIPOUR (Iranian)

Member of International Federation: Islamic Republic of Iran Wushu Federation

Event: In Competition test / 9th Sanda World Cup, Hangzhou, China

Sample Collection Date: 28/10/2018

Prohibited Substance - WADA Prohibited List 2018 / Prohibited substance (s): Exogenous AAS / stanozol metabolite 16 β -hydroxy-stanozoll (S1.1a)

1. COMPOSITION OF THE HEARING PANEL

1.1 The Hearing Panel sitting in the following composition:

Olivier Ducrey, chairman (SUI)

David Feigelson (USA)

Dr Dr. M. Jegathesan (MYS)

2. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

2.1 The Athlete: Mr. Hamidreza GHOLIPOUR

2.2 Articles of the Statutes/Regulations which are applicable or have been infringed:

Art. 2.1.1 IWUF ADR, in force as adopted by IWUF and in compliance with 2015 World Anti-Doping Code.

2.3 Notification and procedure:

- On **December 6, 2018** IWUF Secretary General informed the Athlete through the Islamic Republic of Iran Wushu Federation of the Adverse Analytical Finding (dated **October 28, 2018**). The Athlete was also advised of his right by **December 16, 2018**, to ask for a confirmatory analysis on Sample B, to request a fair hearing and to provide a written explanation of the finding.

- The documents enclosed to the notification letter are the following:
 - 1) Doping Control Form
 - 2) Test Report
 - 3) IWUF Initial Review Document
 - 4) Receipt Confirmation Forms (NF and Athlete)
 - 5) Waiver to B sample analysis request
 - 6) Hearing request
 - 7) Waiver to hearing

- By email dated 11 December 2018, the Iran Wushu Federation provided the receipt confirmation and a declaration from the brother-in-law of the Athlete, Mr. Mehdi Souri, in which he admitted a sabotage. Mr. Souri stated inter alia the following:

"I would like to admit that based to my personal financial conflicts with Mr Hamidreza Gholipour, had been encouraged by one of my friend to prepare a prohibited medicine and powder the pill and pour it in Mr Gholipour beverage during a family gathering, in aim to make his doping test positive in his near future competition s in China. I hoped this act made an irrecoverable damage to him and his sport career due to my personal and financial conflicts with him".

- By email dated 11 December 2018, the Iran Wushu Federation informed IWUF that the Athlete did not want to ask for the B-Sample Analysis.
- On 28 May 2019, the IWUF informed the Athlete that a panel will be set up and a hearing will be held.
- On 31 May 2019, the Athlete sent a letter by email in which he stated inter alia the following:

"I was totally shocked and referring back to my family by broken heart. My sister knows my financial conflict with his husband Mr Mehdi Souri (my brother in law) doubts this case has linked to her husband, because he always treated me to do something extraordinary to finish my sport career and lose my reputation in society. Our conflict with him is back to a family inheritance and heritage that my father distributed before his death and the share he distributed to his children specifically myself and my sister. Mr Souri always complains his wife (my sister) did not receive her share faithfully. So, this issue was a main topic he always treat me and my family member are always in witness. So after IWUF announced my positive test, Mr Souri felt guilty and refer to my sister and revealed very sad story about his action to contaminate the beverage in two weeks before 9th Sanda World Cup in October 2018 during a family gathering. So, even I didn't request for B sample. He confirmed his act by attending in Iran Wushu Federation office in front of Federation Secretary General took oath and signed a statement and confess his shameful act."

- A hearing took place by Skype on 16 June 2019 with the hearing of the Athlete and Mr. Souri as witness and the assistance of a translator.

2.4 Justification for sanction:

Art. 2.1 and art. 2.1.1 IWUF ADR: *"It is every Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. 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 violation under art. 2.1"* (**Strict liability principle**).

Art. 2.1.2 IWUF ADR: *“Sufficient proof of an anti-doping rule violation under Art. 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete’s B Sample is analyzed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample; or where the Athlete’s B sample is split into two bottles and the analysis of a second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle”.*

Art. 2.1.3 IWUF ADR: *“Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation”.*

3. SUMMARY OF FACTS

3.1 Background

Mr. Hamidreza GHOLIPOUR is an athlete (born on 26 June 1988) competing at International level, who competed at 9th Sanda World Cup, Hangzhou, China. He was tested on 28 October 2018.

3.2 Adverse Analytical Finding

On 28 October 2018, the Athlete provided A & B urine samples code number 6356687, collected in-competition in accordance with the IWUF ADR, during the 9th Sanda World Cup, Hangzhou, China. At the time of testing, the Athlete declared the use of the following substances on the Doping Control Form: *“Tab Caffein 200g”*.

3.3 The Certificate of the Analysis confirming an Adverse Analytical Finding (AAF) in this sample was issued by the Anti-Doping Laboratory of Beijing (China), a World Anti-Doping Agency accredited Laboratory. The analysis revealed the presence of Exogenous AAS / stanozol metabolite 16 β -hydroxy-stanozoll (S1.1a) (test report dated 5 December 2018).

3.4 Stanozol metabolite 16 β -hydroxy-stanozoll is a Prohibited Substance listed in S1.1.a , of the WADA Prohibited List of 2017. It is not a Specified Substance. The presence of stanozol metabolite 16 β -hydroxy-stanozoll (S1.1a), an anabolic agent, in an athlete’s sample therefore constitutes an Anti-Doping Rule Violation. Mr. Hamidreza GHOLIPOUR was officially

notified of this Adverse Analytical Finding by the IWUF Secretary General on 6 December 2018.

4. RESULTS MANAGEMENT

4.1 IWUF proceeded with the initial review of the results under Article 7.2.2. IWUF ADR: No applicable Therapeutic Use Exemption (TUE) has been or will be granted to the Athlete and there was no apparent departure from the International Standards for Testing or for Laboratories that could undermine the validity of the AAF.

4.2 As previously noted, with the letter dated 6 December 2018, the Athlete, was notified, through his Islamic Republic of Iran Wushu Federation that he was entitled to request confirmatory analysis of his B-Sample. The Athlete was also informed of his right to be present at the B-Sample opening and analysis within the time prescribed in the International Standard for Laboratories. The Athlete through his federation, waived his right.

4.3 The Athlete did not submit to IWUF any written explanation for the presence of the prohibited substance in his A Sample before his letter date 31 May 2019.

4.4 On 16 June 2019 a hearing by Skype took place. During that hearing, the Athlete inter alia stated that:

- he wrote the letter dated 31 May 2019
- had no objection with the appointed panelists
- he had no objection with the laboratory analysis
- he had a financial conflict with his brother in-law and despite sabotage, he did not file any claim against him nor report the sabotage to local police or local authority
- he followed training program on anti-doping

During that hearing, the witness inter alia stated that:

- he wrote the letter dated 11 December 2018
- he was encouraged by a bodybuilder coach to dope the Athlete. He did not remember the full name of that person nor the name of the substance he received.

- he smashed the substance and pour it in the drink of the Athlete.
- no one was present nor have seen or help to commit this act

5. JURISDICTION

5.1 The Hearing Panel assigned for the case has jurisdiction over this matter pursuant to the IWUF ADR.

6. THE DECISION

6.1 The Hearing Panel is satisfied that the laboratory report confirms that sample collection was performed in accordance with the International Standard for Testing. The Hearing Panel is also satisfied that the A-Sample analytical tests were performed in a proper manner and that the findings of the WADA Accredited Laboratory are accurate. The Hearing Panel is satisfied that the A- Sample test results show the presence of the Prohibited Substance tanzol metabolite 16 β -hydroxy-stanozoll (S1.1a), in contravention of Article 2.1.1 of the IWUF ADR.

6.2 As the Athlete did not request the B-Sample Analysis and did not contest the accuracy of the testing methods or the test results and the positive finding, it is concluded that the Athlete has accepted the analytical results. The Hearing Panel has thus sufficiently proven the objective elements of a doping offence pursuant to Article 2.1.1 of the IWUF ADR.

6.3 **Article 10.2 of the IWUF ADR reads as follows:**

"The period of *Ineligibility* imposed for a first violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension of sanction pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 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 *Athlete* or other *Person* can establish that the anti-doping rule violation was not intentional.

10.2.2 If Article 10.2.1 does not apply, the period of *Ineligibility* shall be two years."

- 6.4 Having noted that the Athlete starts with a four year ban, in order to reduce this to two years, he must “establish that the anti-doping rule violation was not intentional”. The Hearing Panel noted that the Athlete has the burden of proof.
- 6.5 Article 3.1 IWUF ADR states: “...*Where the Anti-Doping Rules place 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, the standard of proof shall be by a balance of probabilities*”.
- 6.6 Can the Athlete establish that the anti-doping violation was not intentional? The Hearing Panel noted that the Athlete had put forward that he had been the victim of sabotage.
- 6.7 The Hearing Panel can accept both circumstantial evidence and witness evidence, but it is for the Hearing Panel to determine what weight to attach to all the evidence before it.
- 6.8 In summary, the Athlete had submitted that the sabotage was carried out by Mr Souri, who admitting having pour a substance he received from his friend at the bodybuilding club to punish the Athlete because of a financial dispute.
- 6.9 The Hearing Panel has carefully considered the written explanations received by the Athlete and the witness, Mr Souri, and their explanations during the hearing. The Hearing Panel notes notably that:
- the Athlete was shocked when notifying the anti-doping violation and despite his financial dispute and this alleged sabotage act, he did not take any measure or file any claim against Mr. Souri nor did he report the sabotage to local police or local authority;
 - Mr. Souri wrote that he was encourage by a friend to to prepare a prohibited medicine and powder the pill and pour it in Mr Gholipour beverage during a family gathering, in aim to make his doping test positive. However, the witness did not remember the full name of this "friend" and did not know the name or the kind of substance he allegedly put in the Athlete's drink;
 - The Athlete did not take any measure, including asking the bodybuilding coach about the substance, to identify the substance and establish in a scientific way that such substance was indeed the one resulting in the Athlete's analysis;

- No one was in position to corroborate the sole witness evidence, which is brought by a member of close family circle of the Athlete.

The Hearing Panel considers that the Athlete may have been victim of a sabotage and finds the sabotage theory possible, but not probable and not grounded in any real evidence. The Hearing Panel therefore determined that the Athlete had failed to satisfy his burden of proof and is satisfied that the most likely explanation was that the Athlete simply and intentionally ingested the prohibited substance.

6.10 The Hearing Panel examines whether other reductions are applicable.

6.11 The Panel notes the wording in Article 10.2 IWUF ADR, that any period of ineligibility would be "*subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6*". Article 10.4 IWUF ADR deals with No Fault or Negligence. However, the Hearing Panel having already determined that the sabotage explanation was not satisfactorily proven by the Athlete, cannot apply Article 10.4 IWUF ADR either.

6.12 Article 10.5 IWUF ADR is available to cases involving Specified Substances or Contaminated Products, neither of which are relevant to the case in hand.

6.13 Finally, Article 10.6 IWUF ADR is available to athletes that have made an admission of the anti-doping violation and who have offered substantial assistance, so again, is of no use to the Athlete.

6.14 The Athlete's period of ineligibility is four years.

6.15 Finally the Hearing Panel wishes to highlight that the administration of a drug with anabolic effects may pose a serious health risk to an athlete, especially if young, and is really concerned about the careless way which the Athlete, his brother-in-law and the Iranian Wushu Federation seem to have dealt with the whole issue of the Adverse Analytical Finding.

7. DISQUALIFICATION

7.1 The Hearing Panel considers that the Athlete shall be disqualified from the 9th Sanda World Cup, Hangzhou, China and the results at the competition forfeited as per Art. 9 IWUF ADR.

8. INELIGIBILITY - START AND DURATION

8.1 According to art. 10.2 IWUF ADR, the Hearing Panel concludes that in the present case, a sanction of 4 (four) years of ineligibility shall be imposed on the Athlete commencing on the date of collection of the Sample, which was 28 October 2018 and therefore concluding on 28 October 2022.

9. RIGHT OF APPEAL

9.1 **Right to Appeal:** as per Art. 13 IWUF ADR this decision may be appealed exclusively to the Court of Arbitration for Sport within 21 days from the date of receipt of this decision.

10. COSTS

10.1 There is no order as to costs.

11. DECISION TO BE FORWARDED TO:

11.1 The person sanctioned: Yes

11.2 The President of the IF and NF of the person sanctioned: Yes

11.3 Any other: WADA

The Hearing Panel

Olivier Ducrey (Chair).....

David Feigelson *David Feigelson*

Dr. M. Jegathesan.....

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