



INTERNATIONAL HOCKEY FEDERATION

THE DISCIPLINARY COMMISSIONER

REFERRAL 2/2018

RESPONDENT:

LI DONGXIAO

DATE OF REFERRAL: 9 August 2018

JURISDICTION FOR REFERRAL: FIH Statutes and the FIH Anti-Doping Rules

DECISION

Introduction

1. This Referral concerns an alleged violation of the FIH Anti-Doping Rules ('ADR') by the Respondent, Li Dongxiao ('LD').
2. The details of the circumstances and the subsequent Charge against LD were set out in a formal Notice of Charge issued on 6 July 2018. The formal Charge was contained in paragraph 3.2 of the Notice of Charge, being the presence of *Sibutramine metabolites di-Desmethyilsibutramine* in an A Sample provided by LD on 16 May 2018, numbered A 4230800, in violation of ADR Article 2.1.
3. On 16 May 2018, a Korea Anti Doping Agency Doping Control Officer (on behalf of FIH) had collected a urine Sample from LD. At the time LD had been playing for China in the Women's Donghae Asian Champions Trophy 2018. The subsequent analysis of the A Sample, carried out at the WADA accredited laboratory in Seoul, revealed that the A Sample contained Sibutramine metabolites.
4. On 7 July 2018 LD accepted Provisional Suspension. She also waived her right to have the B Sample analysed.
5. It was later confirmed by Liu Yuxiang of the Chinese Hockey Association ('CHA'), on behalf of LD, that LD accepted the Charge and did not request a Hearing, but

relied on a Letter of Explanation, dated 16 July 2018, written on her behalf by Zong Weifeng, Secretary General of the CHA.

6. The matter was then referred to me, as FIH Disciplinary Commissioner, to be dealt with in accordance with ADR Article 7.10.3.

Regulatory framework

7. The offence under ADR Article 2.1 is one of strict liability, established by proof that the prohibited substance is present in the sample. For the offence to be established, it is not necessary to prove that the Athlete took the substance intentionally or even knowingly.
8. Sibutramine is classified as a 'Specified Substance'. Accordingly ADR Article 10.2.1.2 is applicable. The sanction to be imposed is a period of ineligibility of two years, unless it is established that the violation was '*intentional*' within the meaning of ADR Article 10.2.3. As explained in Article 10.2.3:

“the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete [...] engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport.”

9. The two year period of ineligibility may be eliminated if the Athlete establishes under ADR Article 10.4 that she bears No Fault or Negligence for the presence of Sibutramine in the sample. Alternatively, the two year period may be reduced if she can establish under ADR Article 10.5 that she bears No Significant Fault or Negligence for the presence of Sibutramine in her sample. However, it is a strict precondition of both pleas that the Athlete must prove on the balance of probabilities how the Sibutramine entered her system.

The evidence and submissions

10. In the Letter of Explanation dated 16 July 2018, it is stated (as translated):

“On knowing the result and the prohibited substance found in her urine sample, [LD] provided immediately two kinds of coffees that she has used during and before the tournament, namely “DL SLIMMING COFFEE” and “GOLD COFFEE”, and the chat log screenshots on her mobile phone for purchasing and transporting the coffee. There is no statement of the existence of Sibutramine in either of these two coffees on the package. Our association representative has witnessed the entire process. LI Dongxiao accepted the positive result and signed the Acceptance Letter for Provisional Suspension right after. She was removed from the World Cup roster at once and stopped from all activities related with hockey in and out of China.

The two coffee samples were sent to CHINADA Food Laboratory for further test on Sibutramine on 10 July followed by the report sent to Chinese Olympic Committee by Chinese Hockey Association where the coffee issue was mentioned on Monday, 9 July. The result of the test comes out on Monday, 16 July, confirming that “high concentration of Sibutramine was found in DL SLIMMINGCOFFEE”.

“On recognizing Sibutramine is an inhibitor commonly used in diet medicines, we see no reason for LI Dongxiao taking the substance on purpose. Considering that fact that she provided the unfinished coffee samples and the purchase record right on knowing the result, we believe she did not take the substance on purpose. She was clearly misguided by the instruction of the coffee which prohibited substance was added in illegally.”

“...we see no reason for Li Dongxiao taking the substance on purpose. Considering the fact that she provided the unfinished coffee samples and the purchase record right on knowing the result, we believe she did not take the substance on purpose”

11. LD herself subsequently, on 21 August 2018, produced a Statement which included the following (as translated):

“I, from mid-April 2018 to the time of Asian Champions Cup campaign, have been continually drinking GOLD COFFEE and DL SLIMMING COFFEE THESE TWO COFFEES BOUGHT FROM MY FRIEND. I bought these two coffees because of my trust in my friend and my habit of drinking coffee, and I also checked the outer packaging of the two coffees repeatedly, but did not see the ingredients of sibutramine in the Nutrition facts. In the meanwhile, I even repeatedly asked her whether there are any ingredients related to doping, and she has clearly replied to me that they do not have such ingredients. Because I know what doping means to athletes, and during the holiday before the Asian Champions Cup campaign, I also take serious attention to my diet at home. I didn't eat any meat products or medicines during my stay at home, I did not expect that sibutramine ingredient was found in the results of the urine test on May 16, and it was just two coffees.

Through this post-event understanding, I learned about the role of sibutramine.Of course, as a professional athlete, I clearly know that I have to be responsible for my actions and consequences. I am also very ashamed to let myself misuse it unintentionally and not manage my own action properly!”

“.....I did not expect that a casual purchase on food lead to the positive result in the urine sample test in the doping control. I did not pay enough attention to the possibility of causing misuse, and drank these coffees in an unintentional way.”

“.... I have been actively cooperating with the organisation’s investigation. I submitted all the evidence and material that I can provide...”

12. Two laboratory reports, following tests carried out on the instructions of the CHA, of the two coffees referred to by LD have been sent to me. The first report, dated 16 July 2018, from the General Administration of Sport of China Anti-Doping Center Food and Drug Doping Testing Laboratory, confirmed that the coffee samples that had been tested revealed a ‘high concentration’ of Sibutramine in the DL Slimming Coffee, but that nothing was detected in the Gold Coffee.
13. Having considered the first Report and the explanations produced by the CHA and LD herself, Jon Wyatt, FIH Sport and Development Director, wrote, on 6 September 2018, as follows:

“We do not have any further evidence or documents to produce at this stage, except a certificate which demonstrates that the athlete participated in a Anti-Doping education programme certified by CHINADA (see attached document).

However, in regards to the Coffee Test Report (certified translation) dated 16 July 2018 issued by CHINADA Food Laboratory confirming that high concentration of Sibutramine was found in DL Slimming Coffee, we would like to kindly request the Chinese Hockey Association to send us the Laboratory Report in detail of the analysis from the General Administration of Sport of China Anti-Doping Center regarding the results of “Slimming Coffee” and “Gold Coffee”.

The document should be in the form of a full scientific report which includes the following sections:

- - *Case Background*
- - *The details of how the product was sent to the Anti-Doping Center Food and Drug testing Laboratory (was the product received in a sealed bags?)*
- - *Supplement Description*

- (i) General Description*
- (ii) Materials Descriptions (packing, product description)*

- Material and Methods

(i) Sample preparation

(ii) Analytical method

- *- Results & Discussions*
- *- The estimated concentration level of Sibutramine found in the product "Slimming Coffee".*
- *- If it exists, the analysis request form for food testing.*
- *- Conclusions*

Furthermore, we kindly request the athlete to provide us with further evidence regarding when, where and how much time she consumed the Slimming Coffee and the Gold Coffee during the period from April until 16 May 2018.

We also kindly request the athlete to provide us with more information regarding where the product tested by the Anti-Doping Center Food and Drug testing Laboratory came from (from the same package of the supplement that the athlete used or directly from the manufacturer?).

In the event the "Slimming Coffee" and the "Gold Coffee" which have been analysed by the above-mentioned Laboratory came directly from the athlete (coffee package already used by the athlete), we kindly request the Chinese Hockey Association to get a new coffee package of "Slimming Coffee" and "Gold Coffee" directly from the manufacturer by reliable independent third party (it could be CHINADA or the National Olympic Committee), and then send the product to the Anti-Doping Center Food and Drug testing Laboratory in Beijing, China for further analysis. Please note that FIH considers that the product should be delivered by a third party who is independent from the athlete and his entourage."

14. In response, the CHA produced a further Report dated 17 October 2018 which described the testing of sealed packages of the two coffees received from an independent third party. The Report confirmed that Sibutramine had been found in the DL Slimming Coffee.
15. At this stage, Jon Wyatt, on behalf of FIH, commented as follows, by letter dated 26 October 2018:

"I write on behalf of the FIH, in response to your letter dated 18 October 2018 and the Test Report dated 17 October 2018 received from the Chinese Hockey Association.

In this regard, please note that we have considered all documents at hand, as well as the second analysis of the DL Slimming Coffee carried out by CHINADA Food Laboratory relating to the alleged violation of FIH Anti-Doping Rules against Ms Li Dongxiao.

Furthermore, please note that FIH has not received any further case details or details as to the report (i.e. a full scientific report) as requested in our correspondence dated 6 September 2018 relating to the first analysis (Report dated 16 July 2018) issued by CHINADA Food Laboratory. Neither have we received any information regarding when and how much time the athlete consumed the Slimming Coffee and the Gold Coffee during the period from April until 16 May 2018.

Apart from the above, we do not have any further observations and submissions having regard to what has been produced.

Finally, please note that in accordance with art. 14.1 (d) (i)&(ii) of the FIH Statutes we leave it to the Disciplinary Commissioner to impose an appropriate sanction with costs and expenses related to the decision based on all documentation, evidence, statements and information at your disposal.”

16. I gave LD and the CHA a final opportunity to comment on FIH’s observations and add anything they wished to the evidence produced. On 30 October 2018, Liu Yuxiang responded by email as follows:

“Li Dongxiao consumed the product including both Slimming Coffee and Gold Coffee almost daily during April and May. As we can conclude from the first sample package of Slimming Coffee which is more than half empty, Li Dongxiao has consumed considerable amount of this product. We have also checked with her roommate and teammate, she is very much addicted to coffee and her statement is very likely to be credible.”

Discussion

17. LD was born on 26 November 1987. She was therefore aged 29 at the time she produced the sample. She is a mature and experienced athlete. She participated in a CHINADA anti-doping programme in 2017. She has frankly stated: *“I did not pay enough attention to the possibility of causing misuse”*. This is, according to FIH’s records, LD’s first anti-doping violation.
18. My first consideration, the offence being one of strict liability, in considering what if any period of ineligibility should be imposed is, as stated above, that the starting point is a period of ineligibility of two years, unless FIH can establish that LD’s violation was *‘intentional’* within the meaning of ADR Article 10.2.3. LD asserts that her consumption of Sibutramine was unintentional. Having considered all the evidence, I am not satisfied that there is sufficient evidence to establish that the

violation was intentional within the meaning of ADR Article 10.2.3.

19. Accordingly, a two year period of ineligibility should be imposed unless LD has satisfied me that the period can be reduced either because she has established, pursuant to ADR Article 10.4, that she bears No Fault or Negligence for the presence of Sibutramine in her sample, in which case the period can be eliminated; or, she has established, under ADR Article 10.5, that she bears No Significant Fault or Negligence for the presence of Sibutramine in her sample, in which case the period can be reduced having regard to the degree of fault or negligence found.
20. At this stage, it is important to note that Sibutramine has been a specified prohibited substance for many years. There have been a number of cases where governing bodies, and indeed CAS, have had to decide upon the appropriate sanction for an anti-doping violation involving Sibutramine. The first step is for the athlete to establish how the Sibutramine entered his/her system. Then, assuming that intentional use is not established, any tribunal considering the matter is required to have regard to the principle that the athlete should take reasonable care to ensure that prohibited substances do not enter his/her system. In particular, an experienced athlete has a duty to be knowledgeable about doping issues and risks.
21. CAS, which is the ultimate appellate authority in such cases, has made it clear that, because contamination of supplement products (including weight loss products) is common and notorious (being the subject of multiple warnings to athletes over the years), an athlete who takes such a product thereby assumes the risk of such contamination and therefore cannot successfully plead No Fault or Negligence, save in exceptional circumstances, if the risk transpires.
22. In the present case, I accept, albeit that LD and the CHA did not respond to FIH's request for more detail to the extent that was requested, that the source of the Sibutramine was the DL Slimming Coffee. I also accept that Sibutramine was not listed on the relevant packaging as being an ingredient. LD's own evidence is that she did not realise until after her sample had been tested that Sibutramine was a prohibited substance that could be found in products such as coffee and chocolate drinks. Furthermore she frankly states that: "*I bought these two coffees because of my trust in my friend and my habit of drinking coffee*" and: "*I even repeatedly asked her*

whether there are any ingredients related to doping, and she has clearly replied to me that they do not have such ingredients” There has been no evidence from this ‘friend’, but, in my view, I must decide whether at best LD was naïve, at worst, reckless, or somewhere in between, in relying on the word of an unqualified third party.

23. As is stated in the final response on LD’s behalf from the CHA: “*she is very much addicted to coffee*”. Given that this addiction meant that LD drank considerable amounts of coffee, and indeed that she appears also to have wished to use a coffee drink as a slimming aid, it was especially important that she should ensure that the products she was consuming did not contain any prohibited substance.
24. In my view the period of ineligibility cannot be eliminated on the ground that there was No Fault or Negligence by LD.
25. I do however accept that the DL Slimming Coffee was contaminated by Sibutramine, unknown to LD. I take the view that LD is entitled, under ADR Article 10.5, to have the consideration of her period of ineligibility measured having regard to the degree of fault or negligence that occurred. Depending on the degree of fault or negligence ADR Article 10.5 can be applied to reduce the two year period of ineligibility. The CAS decision in Cilic v ITF, CAS 2013/A/3327, paras 69 *et seq*, provides some helpful guidance on assessing where an athlete's fault lies within the range of a reprimand to two years. Three categories of fault are there set out: light (0-8 months); normal (8-16 months); and considerable (16-24 months). The athlete's 'objective' fault is assessed to determine into which category he/she falls, and then his/her 'subjective' fault is assessed to move him/her up or down within a specific category (or into a different category in exceptional circumstances).
26. Having regard to all the circumstances of the present case, in my view the category, on the objective test, is neither ‘light’ or ‘considerable’. I cannot also find anything that should, applying the subjective test, change my view. Accordingly, I find that LD’s conduct falls within the ‘normal’ category, and, in my view, in the middle of that category.
27. In my view, for the purposes of ADR Article 10.5, a period of ineligibility of one year is the appropriate sanction.

28. Given that LD promptly admitted her anti-doping rule violation, pursuant to ADR Article 10.11.2 this ‘timely admission’ permits the start date of her period of ineligibility to be back-dated to the date of collection of her sample (i.e., 16 May 2018). ADR Article 10.11.2 requires that at least half the period of ineligibility must be served. In this case, LD has already served a voluntary provisional suspension since 7 July 2018 for which she is entitled to be given credit pursuant to ADR Article 10.11.3, and so, if the one year period of ineligibility is deemed to have begun on 16 May 2018, LD will serve more than half of the period of ineligibility, and the terms of ADR 10.11.2 will be satisfied.

Conclusion

29. For the reasons stated above:
- (1) LD shall serve a period of ineligibility of **12 months commencing on 16 May 2018 and ending at midnight on 15 May 2019.**
 - (2) During her period of ineligibility, LD's status will be as set out under ADR Art 10.12.1, i.e., she may not *‘participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by FIH or any National Association or a club or other member organization of FIH or any National Association, or in Competitions authorized or organized by any professional league or any international or national level Event organization or any elite or national-level sporting activity funded by a governmental agency’*. ADR Article 10.12.2 permits LD during the last two months of the period of ineligibility to return to training with a team or to use the facilities of a club or member organisation of FIH (or FIH member).
 - (3) There shall be no direction for payment of any of the costs of this Referral.

Publication

30. In accordance with ADR Article 14.3.2, this decision will be publicly reported, including by being posted on the FIH’s website.

Rights of appeal

31. This Decision is subject to the rights of Appeal set out in ADR Article 13.

Gordon Nurse
FIH Disciplinary Commissioner
8 November 2018