

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING WILFREDO MARTINEZ
BORN ON 9 JANUARY 1985, CUBA, ATHLETE, ATHLETICS**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8 and 9 thereof:

I. FACTS

1. Wilfredo MARTINEZ (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. From 16 August 2008 to 18 August 2008, the Athlete competed in the Men’s long jump event (Qualification and Final) in which he ranked 5th and for which he was awarded a diploma.
3. On 18 August 2008, on the occasion of the Final, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1843695.
4. The A-Sample 1843695 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected upon the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne, Switzerland (“the **Laboratory**”) for long-term storage.
6. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods using more sensitive equipment and/or searching for new metabolites in order to possibly detect Prohibited Substances which were not identified by the analysis performed at the time of the 2008 Olympic Games.
7. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
 - An initial analysis was to be conducted on the remains of the A-samples
 - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of a A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory, the A-Samples were not individually resealed nor transported in sealed containers.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. A similar cautious approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample into a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for such first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
15. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of a Prohibited Substance: acetazolamide.
16. On 18 May 2016, the Athlete through his NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. The Athlete was also advised that the opening and analysis of the B-Sample was scheduled to take place either on 31 May 2016 or 1 June 2016.
17. Neither the Athlete, the NOC nor the IF replied.
18. On 27 May 2016, the IOC informed the NOC and the IF that no reply had been given to the communication dated 18 May 2016 and indicated that the opening and analysis of the Athlete’s B-Sample had been postponed until 6 June 2016. The NOC and IF were further required to provide assistance in locating the Athlete.
19. On 30 May 2016, the NOC informed the IOC that the Athlete left Cuba illegally in 2011. The NOC confirmed that they were not in the position to contact the Athlete.
20. On 3 June 2016, the IOC requested additional assistance to the IF.
21. On 7 June 2016, the IF informed the IOC that the Athlete moved to Spain and was affiliated to the club C.A. Playas de Castellón. The IF also provided the IOC with the profile page of the Athlete, where his email address was indicated.
22. On 15 June 2016, the IOC wrote to the Athlete using the email address communicated by the IF in order to have a confirmation that the email address was still active and belonged to him.
23. On the same day, the Athlete acknowledged receipt of the IOC’s email and attached a copy of his passport to confirm his identity.

24. On 17 June 2016, the IOC sent directly to the Athlete the communication dated 18 May 2016 informing him of the PAAF resulting from the reanalysis of one of his samples.
25. On 21 June 2016, the Athlete sent his completed PAAF Notification Appendix to the IOC, in which he indicated that he would not attend the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample, neither personally nor through a representative.
26. On the same day, the IOC informed the Athlete that the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B-Sample was scheduled to take place on 27 June 2016 at the Laboratory. The Athlete was advised that the opening and splitting of the B-Sample would be conducted in the presence of an independent witness.
27. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 27 June 2016 at the Laboratory.
28. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
29. As provided in the ISL, the opening and splitting was attended by an independent witness.
30. The results of the B1-Sample analysis were reported on 28 June 2016. These results establish the presence of the metabolites of a Prohibited Substance, namely acetazolamide.
31. Such results constitute an Adverse Analytical Finding. They were reported to the IOC in accordance with article 7.2.1 of the Rules.
32. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
33. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Legal Affairs Commission;
 - Mrs Gunilla Lindberg (Sweden)
 - Mr Ugur Erdener (Turkey)
34. On 4 July 2016, the IOC notified the Athlete of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of his right to request and attend the opening of the B2-Sample and its analysis. He was finally informed of his right to request a copy of the laboratory documentation package.
35. On 7 August, the Athlete provided the IOC with his completed AAF Notification Appendix signed by his legal counsel, Mr Boris Emilov Kolev, in which he indicated that he did not accept the Adverse Analytical Finding and requested the opening and analysis of the B2-Sample. He indicated that he would not attend personally the process and that he would not be represented on this occasion. He did not request a copy of the laboratory documentation package. A power-of-attorney signed by the Athlete was attached to the AAF Appendix Form.
36. In his AAF Notification Appendix, the Athlete's counsel mentioned the following comment:

“I would like to have the B2-Sample opened only if this will not incur any charges on him.

37. On 11 July 2016, the IOC asked the Athlete to indicate the email address of his legal counsel and advised him that the opening and analysis of his sample would not be charged on him.
38. In the same communication, the IOC informed the Athlete that the opening and analysis of the B2-Sample would take place on 12 July 2016.
39. The opening of the B2-Sample occurred on 12 July 2016 in the presence of an independent witness followed by the analysis.
40. The results of the B2-Sample analysis were reported to the IOC on 13 July 2016. They confirmed the presence in the B2-Sample of the metabolites of a Prohibited Substance, namely acetazolamide.
41. On 14 July 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was invited to indicate whether he accepted the Adverse Analytical Finding, whether he would attend the hearing of the Disciplinary Commission and/or he would submit a defence in writing. The Athlete was also informed of his right to request a copy of the laboratory documentation package.
42. On 18 July 2016, the Athlete sent to the IOC his completed Disciplinary Commission Form, signed by his counsel, in which he indicated that he accepted the Adverse Analytical Finding. He requested a copy of the B2-Sample laboratory documentation package. The Athlete also indicated that he would not attend the hearing of the Disciplinary Commission, neither personally nor through a representative. He finally indicated that he would present a defence in writing.
43. On 26 July 2016, the IOC acknowledged receipt of the completed Disciplinary Commission Form.
44. On 29 July 2016, the IOC provided the Athlete through his counsel with a copy of the B1-Sample and B2-Sample laboratory documentation packages as well as additional documentation related to his sample, in particular the handling of the sample in Beijing and its transfer to Lausanne.
45. In the same communication, the Athlete was invited to submit his written defence by 12 August 2016.
46. On the same day, the NOC and the IF were invited to file written observations within a deadline expiring on 12 August 2016.
47. On 1 August 2016 and 9 August 2016, the Athlete’s counsel requested an extension of the deadline to submit his client’s written defence.
48. On 9 August 2016, the IOC advised the Athlete’s counsel that he was granted his requested extension until 22 August 2016.
49. In his written defence, the Athlete explained the political reasons of his departure from Cuba in 2011. He further submitted that he had been subject to several anti-doping tests after the Olympic Games Beijing 2008 during competitions around the world and that none of them ever returned positive. He explained that he was shocked when he received notification of the AAF reported in Lausanne in 2016.

50. The Athlete explained that he had been aware of his obligations as professional athlete all along his career. He submitted that he had always followed the recommendations received from the doctors of the Athletics Cuban national team. He contended that he was not in the position to provide the Disciplinary Commission with the name of the medications used at the time because all his belongings had been seized by the Cuban state security when he left Cuba in 2011. For the same reason, the Cuban Federation would be likely to misrepresent the facts of his case and/or hide documents in detriment of the Athlete in order to avoid responsibility in the present proceedings.
51. In his submissions, the Athlete indicated that, as the entire delegation of the Cuban delegation, they were provided with some pills by Mr Fidel Felix Frias Plasencia during the period prior to the Olympic Games Beijing 2008. He was however not able to remember the name of the products given by this person.
52. He also explained that he tore a muscle 30 days before the beginning of the Olympic Games Beijing 2008 and had to “attend recreational (sic) procedures every day”, during which he was given medication against inflammation and cramps. He would have also received injections two weeks after the injury and he would have been given a medication against flu ten days before the beginning of the Games.
53. He also explained that he received one injection prior to the qualification for the Olympic Games Beijing 2008 by Mr Rodrigo Alvares Cambra. The latter would have refused to indicate the nature of the product injected despite the questions asked by the Athlete.
54. The Athlete also referred to Mrs Yarelis Barrios, who had also been notified of an AAF reported for the same prohibited substance, i.e. acetazolamide, and who was also a member of the Cuban delegation on the occasion of the 2008 Games. He requested the Disciplinary Commission to examine his case in relation to Mrs Barrios’ case as she would have been able to collect documentation and evidence from the national federation.
55. The Athlete finally requested to extend the procedure to Mr Fidel Felix Frias Plasencia and Mr Rodrigo Alvares Cambra. He also requested to conduct disciplinary proceedings against the Cuban Athletics Federation.
56. Neither the NOC nor the IF replied.

II. APPLICABLE RULES

57. These proceedings are conducted in application of the Rules.
58. Art. 2.1 of the Rules provides as follows:

“The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen.

2.1.1 It is each 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 bodily Specimens. 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 Article 2.1.

- 2.1.2 *Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected 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.*
- 2.1.3 *As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."*

59. Art. 2.2 of the Rules provides as follows:

"Use or Attempted Use of a Prohibited Substance or a Prohibited Method

2.2.1 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be used for an anti-doping rule violation to be committed."

60. Art. 5.1 of the Rules provides as follows:

"The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.

The Period of the Olympic Games, or In-Competition Period, is defined as "the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.

All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.

The IOC shall have the right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases."

61. Art. 7.3.3 of the Rules provides as follows:

"Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or the General Secretary of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC."

62. Art. 8.1 of the Rules provides as follows:

"A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes."

63. Art. 9.1 of the Rules provides as follows:

"An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete's results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1."

64. Art. 9.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation”.

65. Art. 9.3 of the Rules provides as follows:

“The management of anti-doping rule violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the Olympic Games, shall be managed by the relevant International Federation”.

III. DISCUSSION

66. The presence of metabolites of a Prohibited Substance, i.e. acetazolamide, has been established in 2016 in the sample 1843695 that the Athlete provided on 18 August 2008, upon the occasion of the 2008 Olympic Games.
67. The substance detected in the Athlete’s sample is a diuretic and masking agent. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
68. The Disciplinary Commission is satisfied that the sample which has been re-analysed by the Laboratory is unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
69. Based on the above, the Disciplinary Commission finds that an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in the Athlete’s bodily sample.
70. Since the consequences applicable in this case pursuant to the Rules (disqualification of the results of the event concerned and resulting consequences) do only depend on the existence of an objective anti-doping rule violation, the explanations provided by the Athlete, which do not put such violation in question, are, as a matter of principle, not decisive for the decision to be issued in these proceedings.
71. To the extent needed, these arguments will have to be addressed in the further proceedings, which will be conducted in application of the IAAF Rules and in which consequences beyond the Olympic Games will be considered.
72. Regarding the substance of the Athlete’s explanations, the Disciplinary Commission simply observes that in these proceedings, the Athlete has only raised uncontrolled hypothesis.
73. The Athlete did not concretely establish the source of the positive findings. In this respect, the Disciplinary Commission observes that on his Doping Control Form, the Athlete disclosed only the use of Bolaren. This seems to be inconsistent with the explanations he has submitted, which imply the use of further medications or products.
74. In any event, the Disciplinary Commission observes that the Athlete has so far failed to bring forth any concrete element, which would support a finding excluding that he did not simply used the substance for doping (in this case masking) purposes.
75. In any event an anti-doping violation is and remains in any event established pursuant to Art. 2.1 of the Rules.

76. The consequences of an anti-doping rule violation, limited to consequences in connection with the 2008 Olympic Games, are set forth in Art. 8 and 9 of the Rules.
77. In application of Art. 8.1 and/or Art. 9 of the Rules, the results achieved by the Athlete at the Men's long jump event in which he ranked 5th during the 2008 Olympic Games, shall be annulled, with all resulting consequences (notably withdrawal of medal, diploma, pin etc.).
78. In application of Art. 9.3 of the Rules, the further management of the consequences of the anti-doping rule violations and in particular the imposition of sanctions over and above those related to the Olympic Games 2008 shall be conducted by the International Association of Athletics Federations ("IAAF").
79. In the context of this further management, the IAAF is invited to examine the Athlete's allegations regarding the possible implications of third parties including the people designated by the Athlete.

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CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, 2, 5.1, 7.3.3, 8 and 9 thereof.

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Wilfredo MARTINEZ:
 - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from all the events in which he participated upon the occasion of the Olympic Games Beijing 2008, namely, at the Men's long jump event,
 - (iii) has the diploma obtained in the Men's long jump event withdrawn and is ordered to return the same.
- II. The IAAF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The Comité Olimpico Cubano shall ensure full implementation of this decision.
- IV. The Comité Olimpico Cubano shall notably secure the return to the IOC, as soon as possible, of the diploma awarded in connection with the Men's long jump event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 19 October 2016

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg