

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING JOSEPHINE NNKIRUKA ONYIA
BORN ON 15 JULY 1986, SPAIN, 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. Josephine Nnkiruka ONYIA (hereinafter the “Athlete”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “2008 Olympic Games”).
2. From 17 August 2008 to 18 August 2008, the Athlete competed in the Women’s 100m hurdles event (Round 1 and Semifinal) in which she ranked 9th.
3. On 18 August 2008, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1846299.
4. The A-Sample 1846299 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: methylhexanamine.
16. On 18 May 2016, the Athlete through her 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, which was initially scheduled to take place either on 31 May 2016 or 1st June 2016.
17. The NOC informed the IOC that the Athlete left Spain and moved back to her country of origin, Nigeria. The IOC was also informed that a lifetime ban would have been pronounced against her.
18. On 27 May 2016, the IOC informed the Athlete, through her NOC, that the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample was postponed until 6 June 2016. She was once again invited to attend the process. She was further advised that in the event no reply was given to this correspondence, the IOC would conduct the process noting that her attendance was not required at this stage under the applicable ISL provisions.
19. On the same day, the IOC requested the NOC and the IF to continue their efforts in locating the Athlete.
20. On 30 May 2016, the NOC confirmed once again that the Athlete would have moved to Nigeria and that they had not been able to locate her. The IOC was also informed that the NOC unsuccessfully attempted to communicate the correspondence dated 18 May 2016 to the Athlete by postal mail.
21. On 7 June 2016, the IF provided the IOC with the Athlete’s email address recorded in the IAAF database.
22. On 13 June 2016, the IOC wrote to the email address provided by the IF and requested to receive a confirmation that this email address was valid.

23. The email dated 13 June 2016 did not receive any reply.
24. On 28 June 2016, the IOC informed the NOC and the IF that the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample would be conducted in any event as the presence of the Athlete was not required at this stage according to the applicable ISL.
25. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 28 June 2016 at the Laboratory.
26. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
27. As provided in the ISL, the opening and splitting was attended by an independent witness.
28. 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 methylhexanamine.
29. Such results constitute an Adverse Analytical Finding. They were reported to the IOC in accordance with article 7.2.1 of the Rules.
30. 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.
31. 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)
32. On 4 July 2016, the IOC notified the Athlete through her NOC 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 her right to request and attend the opening of the B2-Sample and its analysis, either in person and/or through a representative, which was scheduled to take place on 12 July 2016. The Athlete was also informed of her right to request a copy of the laboratory documentation package. She was finally advised that failing to request the opening and analysis of the B2-Sample, she would be considered as having waived her right to have the B2-Sample analysed.
33. On 5 July 2016, the NOC acknowledged receipt of the correspondence dated 4 July 2016.
34. On 4 October 2016, the IOC reminded the NOC that in accordance with Art. 7.3.3 of the Rules and although it was not able to communicate with the Athlete, notice to an athlete who had been accredited pursuant to the request of an NOC might be accomplished by delivery of the notice to the NOC. The NOC was advised that the correspondences addressed to the Athlete through her NOC were therefore considered as having been duly notified to the Athlete. The IOC informed the NOC that it had been decided to pursue the disciplinary proceedings on the basis of the B1-Sample analysis results only as the lack of

reply was considered as a waiver of the Athlete's right to request the analysis of the B2-Sample as per Art. 7.2.5 of the Rules.

35. In the same letter, the NOC was invited to indicate whether it would send an NOC representative to the hearing of the Disciplinary Commission. The IOC also invited the NOC to file written observations by 14 October 2016.
36. On the same day, the IOC sent a communication to the Athlete, through her NOC. The Athlete was advised that the previous correspondences were considered as duly notified in accordance to Art. 7.3.3 of the Rules. She was also informed that her lack of reply was considered as a waiver of her right to request the analysis of the B2-Sample as per Art. 7.2.5 of the Rules. She was given a deadline until 12 October 2016 to indicate whether she would participate in the hearing of the Disciplinary Commission. The IOC invited her to submit a written defence by 14 October 2016.
37. On the same day, the IF was invited to file written observations by 14 October 2016.
38. On 5 October 2016, the NOC acknowledged receipt of the correspondence dated 4 October 2016.
39. Neither the Athlete nor the IF replied.
40. It is to be observed that the Athlete is serving a life-ban following a third established anti-doping violation.

II. APPLICABLE RULES

41. These proceedings are conducted in application of the Rules.
42. 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."*

43. 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.”

44. 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.”

45. Art. 7.2.5 of the Rules provides as follows:

“The IOC President or a person designated by him shall, in confidence, promptly notify the Athlete or other Person concerned, the Athlete’s or other Person’s chef de mission, the International Federation concerned and a representative of the Independent Observer Program of:

- a) the adverse analytical finding;*
- b) the Athlete’s right to request the analysis of the B sample or, failing such request, that the B sample analysis may be deemed waived;*
- c) the right of the Athlete and/or the Athlete’s representative to attend the B sample opening and analysis if such analysis is requested;*
- d) the Athlete’s right to request copies of the A and B sample laboratory package, which includes information as required by the International Standard for Laboratories;*
- e) the anti-doping rule violation or of the additional investigation that will be conducted as to whether there is an anti-doping rule violation;*
- f) the composition of the Disciplinary Commission.*

It shall be the responsibility of the chef de mission to inform, in confidence, the relevant National Anti-Doping Organisation of the Athlete.”

46. 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.”

47. 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.”

48. 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.”

49. 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”.

50. 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

51. The results of the analysis of the sample provided by the Athlete establish the presence in her sample of the metabolites of a Prohibited Substances, i.e. methylhexanamine.
52. The substance detected is a stimulant. It is listed in the WADA 2008 Prohibited List and in all subsequent lists under S6.
53. 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.
54. The Disciplinary Commission observes that the Athlete has been notified of all the communications, which were addressed to her through her NOC.
55. In accordance with Art. 7.3.3 of the Rules, this implies that notification to the Athlete is deemed to have been accomplished for all communications notified to the NOC.
56. Further, notifications have also been made to an email address, which was identified by the IF as the Athlete’s address. The Athlete however never responded to any mail communication.
57. Other attempts by the NOC and the IF to locate the Athlete remained unsuccessful.
58. Given this situation and the uncertainty regarding the notifications by mail, the Disciplinary Commission holds that the notifications to the Athlete shall be deemed as accomplished by the notifications to the NOC pursuant to Art. 7.3.3 of the Rules.

59. This applies in particular to the notification of the question regarding the exercise of the right of the Athlete to request the analysis of the B2-Sample. Such question was duly included in the AAF notification letter.
60. Since the Athlete did not request the analysis of the B2-Sample, such may therefore be deemed waived.
61. In the absence of an Athlete's request and since the IOC decided not to conduct the B2-Sample analysis, the analytical results are in this case based on the results of the B1-sample.
62. Such results establish the presence of a Prohibited Substance, i.e. methylhexanamine in the sample, which the Athlete provided upon the occasion of the 2008 Olympic Games.
63. Based on the above result, the Disciplinary Commission finds that the Athlete has committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in her bodily sample.
64. In addition, the Disciplinary Commission observes that the circumstances also supports a finding of anti-doping rule violation based on art. 2.2 of the Rules.
65. The substance is a stimulant and is thus by nature performance-enhancing.
66. Furthermore, in this very particular case, the doping history of the Athlete makes intentional doping the clearly most likely hypothesis.
67. The consequences of an anti-doping rule violation under the Rules are limited to consequences in connection with the 2008 Olympic Games. They are set forth in Art. 8 and 9 of the Rules and are the following.
68. The consequences of an anti-doping rule violation pursuant to the Rules are limited to consequences in connection with the 2008 Olympic Games.
69. In application of Art. 8.1 and/or Art. 9.1 of the Rules, the results achieved by the Athlete during the 2008 Olympic Games shall be annulled, with all resulting consequences (notably withdrawal of medal, diploma, pin etc.).
70. 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 2008 Olympic Games shall normally be conducted by the International Association of Athletics Federations ("IAAF").
71. However, in this very particular case in which the Athlete is already suspended for life for subsequent doping violations, there is no room for a further management with respect to the suspension of 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, Josephine Nnkiruka ONYIA:
 - (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 and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the Women's 100m hurdles event in which she participated upon the occasion of the Olympic Games Beijing 2008.
- II. The IAAF is requested to modify the results of the above-mentioned event accordingly.
- III. This decision enters into force immediately.

Lausanne, 19 October 201

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg