

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING KHADZHIMURAT AKKAEV
BORN ON 27 MARCH 1985, RUSSIAN FEDERATION, ATHLETE, WEIGHTLIFTING**

(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 XXX Olympiad, London 2012 (the “**Rules**”) and, in particular, Articles 1, 2, 6.3.3, 7 and 8 thereof:

I. FACTS

1. Khadzhimurat AKKAEV (hereinafter the “**Athlete**”), participated in the Games of the XXX Olympiad, London 2012 (the “**2012 Olympic Games**”).
2. The Athlete was registered to compete in the Men’s 105 kg weightlifting event, which took place on 7 August 2012. He had however to withdraw before the start of the competition because he had not recovered from a back surgery.
3. On 5 August 2012, the Athlete was requested to provide a urine sample for a doping control (in competition). Such sample was identified with the number 2720849.
4. The A-Sample 2720849 was analysed during the 2012 Olympic Games by the WADA-accredited Laboratory in London. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2012 Olympic Games, all the samples collected upon the occasion of the 2012 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 2012 Olympic Games. These additional analyses were notably performed with improved analytical methods in order to possibly detect Prohibited Substances which could not be identified by the analysis performed at the time of the 2012 Olympic Games.
7. The IOC decided that the reanalysis process would be conducted as a regular A and B sample analysis, without resorting to a splitting of the B-sample.
8. The remains of the A-Sample were analysed by the Laboratory and resulted in an Adverse Analytical Finding (“**AAF**”) as it showed the presence of the metabolites of a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
9. The results were reported to the IOC in accordance with Art. 6.2.1 of the Rules.
10. Further to the verifications set forth in Art. 6.2.2 of the Rules and in application of Art. 6.2.3 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.

11. 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)
12. On 13 December 2016, the IOC notified the Athlete, through his 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 his right to request the opening and analysis of the B-Sample and to attend this process, either in person and/or through a representative, which was scheduled to take place between 9 and 11 January 2017. The Athlete was also informed of his right to request a copy of the laboratory documentation package.
13. In the same correspondence, the Athlete was advised that in the event the opening and analysis of the B-Sample were not requested, he might be deemed of having waived his right to have the B-Sample analysed.
14. The Athlete did not reply.
15. On 28 December 2016, the Athlete through his NOC was invited once again to indicate whether he would attend the opening and analysis of his B-Sample. He was advised that, in accordance with Art. 6.3.3 of the Rules, notice to an athlete might be accomplished by delivery of the notice to the NOC and that therefore the previous correspondences were deemed notified to him. The Athlete was also informed that in the absence of an answer, the IOC might decide to conduct the process in any event in the presence of an independent witness.
16. On the same day, the NOC was required by the IOC to collaborate and to take further actions with the National Federation concerned in order to effectively communicate the communications to the Athlete.
17. On the same day, the IF was requested to provide the IOC with full contact details of the Athlete, including email and postal address.
18. The Athlete and the NOC did not reply. The IF did not provide the IOC with the Athlete's details.
19. On 16 January 2017, the IOC granted the Athlete, through his NOC, an additional deadline until 18 January 2017 to indicate whether he accepted the AAF, whether he would attend the opening and analysis of the B-Sample, either personally and/or through a representative, which was rescheduled to take place on 30 or 31 January 2017. He was also invited to indicate whether he requested a copy of the laboratory documentation package.
20. In the same communication, the IOC reminded the Athlete of the Art. 6.3.3 of the Rules. The IOC also repeated that, in the event he did not respond, the IOC might elect not to proceed with the analysis of the B-Sample and to proceed directly with the procedure before the Disciplinary Commission based on the A-Sample analysis results only.
21. The Athlete did not reply.

22. On 23 January 2017, the Athlete through his NOC was reminded of the content of Art. 6.3.3 of the Rules and he was informed that the IOC had elected not to proceed with the opening and analysis of the B-Sample. The Athlete was informed that the hearing of the Disciplinary Commission had been scheduled to be held on 1 or 2 March 2017 and was invited to indicate by 8 February 2017 whether he would attend the hearing, either personally or through a representative. He was advised of the possibility to participate in the hearing via videoconference. The Athlete was finally invited to submit his written defence by 20 February 2017.
23. On the same day, the NOC and the IF were invited to send a representative to the hearing and to submit written observations within a deadline expiring on 20 February 2017.
24. The Athlete did not reply.
25. On 17 February 2017, the Athlete through his NOC was granted an additional deadline until 20 February 2017 to indicate whether he would attend the hearing of the Disciplinary Commission. He was reminded of the possibility to submit a written defence until 20 February 2017.
26. The Athlete did not reply.
27. On 23 February 2017, the IOC informed the Athlete through his NOC that the Disciplinary Commission would issue a decision on the basis of the file.
28. The Athlete did not reply. Neither the NOC nor the IF filed written observations.
29. As a final observation, it is to be noted that samples provided by the same Athlete on the occasion of the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”) were also subject to further analysis.
30. In this case, the analytical results showed the presence of the same Prohibited Substance, namely dehydrochloromethyltestosterone (turinabol).
31. The corresponding proceedings addressing this further matter have been conducted in parallel to the present proceedings. The Disciplinary Commission issued its decision in this matter on 10 November 2016 (BRT III – 033). The Athlete did not appeal the decision before the Court of Arbitration for Sport.

II. APPLICABLE RULES

32. Art. 1 of the Rules provides as follows:

“Application of the Code – Definition of Doping – Breach of the Rules

 - 1.1 *The commission of an anti-doping rule violation is a breach of these Rules.*
 - 1.2 *Subject to the specific following provisions of the Rules below, the provisions of the Code and of the International Standards apply mutatis mutandis in relation to the London Olympic Games.”*
33. Art. 2 of the Rules provides that Article 2 of the Code applies to determine anti-doping rule violations.

34. Art. 2.1 of the Code provides that the following constitutes an anti-doping rule violation:

“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.

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 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 Article 2.1.*

2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either 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 analysed; or, where the Athlete’s B Sample is analysed 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.*

2.1.3 *Excepting those substances for which a quantitative 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.*

2.1.4 *As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.”*

35. Art. 2.2 of the Code provides the following constitutes an anti-doping rule violation:

“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.

2.2.1 *It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. 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 rule violation for Use of a Prohibited Substance or a Prohibited Method.*

2.2.2 *The success or failure of the Use or Attempted 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.”*

36. Art. 6.2.6 of the Rules provides as follows:

“The IOC President or a person designated by him shall 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 may be deemed waived;*
- c) *the scheduled date, time and place for the B Sample analysis if the Athlete chooses to request an analysis of the B Sample or if the IOC chooses to have the B sample analysed;*
- d) *the right of the Athlete and/or the Athlete’s representative to attend the B sample opening and analysis if such analysis is requested;*

- e) *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;*
- f) *the anti-doping rule violation or, where applicable, instead of the information in (a) to € , the factual basis of the other anti-doping rule violation(s), and if applicable, the additional investigation that will be conducted as to whether there is an anti-doping rule violation;*
- g) *the composition of the Disciplinary Commission.*

It shall be the responsibility of the chef de mission to inform the relevant National Anti-Doping Organisation of the Athlete."

37. Art. 6.3.3 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 Secretary General of the NOC of the Athlete or other Person shall be deemed to be delivery of notice to the NOC."

38. Art. 7.1 of the Rules provides as follows:

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

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

"An anti-doping rule violation occurring or in connection with the London Olympic Games may lead to Disqualification of all the Athlete's results obtained in the London Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 8.1.1."

40. Art. 8.1.1 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 Competitions (for which the Athlete's results have not been automatically Disqualified as per Article 7.1 hereof) 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."

41. Art. 8.3 of the Rules provides as follows:

"The Consequences 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 London Olympic Games, shall be managed by the relevant International Federation."

III. DISCUSSION

42. The results of the analysis of the sample provided by the Athlete establish the presence in his sample of the metabolites of a Prohibited Substance, i.e. dehydrochlormethyltestosterone (turinabol).

43. The substance detected is an anabolic steroid. It is listed in the WADA 2012 Prohibited List and in all subsequent lists under S1.
44. The Disciplinary Commission notes that the Athlete has been notified of the AAF and all subsequent communications, which were addressed to him through his NOC.
45. In accordance with Art. 6.3.3 of the Rules, this implies that notification to the Athlete is deemed to have been accomplished for all communications notified to the NOC.
46. 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 B-Sample. Such question was duly included in the AAF notification letter.
47. The Athlete, having been duly notified, did not request the analysis of the B-Sample. Such may be deemed waived pursuant to Art. 6.2.6 lit. b of the Rules.
48. Since the IOC decided not to conduct the B-Sample analysis, the analytical results are in this case solely based on the results of the A-sample.
49. Such results establish the presence of metabolites of a Prohibited Substance, i.e. dehydrochlormethyltestosterone (turinabol) in the sample, which the Athlete provided upon the occasion of the 2012 Olympic Games.
50. Based on the above results, the Disciplinary Commission finds that the Athlete has committed an anti-doping rule violation pursuant to Art. 2.1 of the Code consisting in the presence of a Prohibited Substance in his bodily sample.
51. Pursuant to Art. 2.1.2 of the Code, *“Sufficient proof of an anti-doping rule violation under Article 2.1 is indeed established by the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives the analysis of the B Sample and the B Sample is not analysed.”*
52. In addition, the Disciplinary Commission observes that the circumstances appear to also support a finding of an anti-doping rule violation based on art. 2.2 of the Code.
53. The fact that a doping substance which is a “classical” doping substance broadly used at the time of the analysis supports this consideration.
54. There is indeed a simple and straightforward explanation for the fact that dehydrochlormethyltestosterone (turinabol) was found in the Athlete’s sample, i.e. its use as doping agent for the purpose of performance enhancement.
55. Finally, the fact that samples of the same Athlete collected on the occasion of the 2008 Olympic Games were also found to contain one of the Prohibited Substances detected in the sample collected in 2012, i.e. dehydrochlormethyltestosterone (turinabol), more than suggests that the Athlete has been doping on a regular basis throughout his career. He could evade detection until the new methods based on long-term metabolites finally exposed him.
56. The consequences of an anti-doping rule violation pursuant to the Rules are limited to consequences in connection with the 2012 Olympic Games.
57. In application of Art. 7.1 and/or Art. 8.1 of the Rules, the results achieved by the Athlete during the 2012 Olympic Games shall be annulled. This includes the results that the Athlete did not start.

58. In application of Art. 8.3 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 2012 Olympic Games shall be conducted by the International Weightlifting Federation (“**IWF**”).

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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 XXX Olympiad in London in 2012 and, in particular, Articles 1, 2, 6.3.3, 7 and 8 thereof

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Khadzhimurat AKKAEV:
 - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad in London in 2012 (presence, and/or use, of Prohibited Substances or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the Men's 105 kg weightlifting event in which he was registered upon the occasion of the Olympic Games London 2012,
- II. The IWF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. This decision enters into force immediately.

Lausanne, 15 March 2017

In the name of the IOC Disciplinary Commission


Denis Oswald, Chairman


Gunilla Lindberg


Ugur Erdener