

INTERNATIONAL OLYMPIC COMMITTEE

**IOC EXECUTIVE BOARD
DECISION**

**REGARDING DAVIDE REBELLIN
BORN ON 9 AUGUST 1971, ATHLETE, ITALY, CYCLING - ROAD**

(Rule 23.2.1 of the Olympic Charter)

UPON CONSIDERING the attached recommendation of the IOC Disciplinary Commission dated 11 November 2009, pursuant to the Olympic Charter and, in particular, Rule 23.2.1 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, Articles 2.1 and 8 thereof:

**THE EXECUTIVE BOARD OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES**

- I. The athlete, Davide Rebellin, Italy, Athletics:
 - (i) be disqualified from the Men's Cycling Road event of the Beijing 2008 Olympic Games, where he had placed 2nd.
 - (ii) shall have his medal and diploma in the above-mentioned event withdrawn.
- II. The Union Cycliste International is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee ("NOC") of Italy is ordered to return to the IOC, as soon as possible, the medal and diploma awarded to the Athlete in relation to the above-mentioned event.
- IV. The NOC of Italy shall ensure full implementation of this decision.
- V. This decision shall enter into force immediately.

Lausanne, 17 November 2009

On behalf of the IOC Executive Board

Dr Jacques ROGGE
IOC President

Urs LACOTTE
Director General

**INTERNATIONAL OLYMPIC COMMITTEE
IOC DISCIPLINARY COMMISSION**

RECOMMENDATIONS

**REGARDING DAVIDE REBELLIN
BORN ON 9 AUGUST 1971, ATHLETE, ITALY, CYCLING - ROAD**

(Rule 23.2.1 of the Olympic Charter)

1. On 5 August 2008, at approximately 21:45, Davide Rebellin (hereinafter the "Athlete"), a participant in the Games of the XXIX Olympiad in Beijing (the "2008 Olympic Games") was requested to provide a pre-competition blood sample for a doping control.
2. On 9 August 2008, the Athlete competed in the Men's Cycling Road event of the 2008 Olympic Games, in which he placed 2nd.
3. The A sample of the Athlete was tested during the 2008 Olympic Games by the WADA Accredited Laboratory in Beijing, for Recombinant Human Growth Hormone, but did not result in an adverse analytical finding at the time.
4. After the end of the 2008 Olympic Games, the A and B samples collected from the Athlete were sent to Lausanne, at the WADA Accredited "Laboratoire Suisse d'Analyse du Dopage" (hereinafter the "LAD"), along with all other samples from other athletes collected upon the occasion of the 2008 Olympic Games.
5. The International Olympic Committee (hereinafter the "IOC"), pursuant to Article 6.5 of the *IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008* (the "*Rules*"), decided in January 2009 to perform further testing on the samples collected during the 2008 Olympic Games, targeting mirCERA© (hereafter "CERA", a third generation of EPO) and insuline.
6. The A sample of the Athlete was subject to a screening test for the prohibited substance CERA by the LAD, and subsequently sent for analysis to the WADA accredited "Laboratoire d'Analyses de l'Agence Française de Lutte contre le Dopage" (hereinafter the "LAAFLD").
7. Pursuant to Article 7.2.1 of *Rules*, the representative of the Chairman of the IOC Medical Commission, Dr. Patrick Schamasch, was informed on 28 April 2009, by the Head of the LAAFLD, of an adverse analytical finding on the A sample of the Athlete.
8. Pursuant to Article 7.2.2 of the *Rules*, Dr. Patrick Schamasch determined that the above-noted A sample belonged to the Athlete, and verified that it did in fact give rise to an adverse analytical finding. He also determined that there was no apparent departure from the International Standards for Testing or the International Standards for Laboratories that undermined the validity of the adverse analytical finding.
9. Pursuant to Article 7.2.3 of the *Rules*, the IOC President, Dr. Jacques Rogge, was promptly informed of the existence of the adverse analytical finding and the essential details concerning the case.
10. Pursuant to Article 7.2.4 of the *Rules*, the IOC President, by letter dated 28 April 2009, set up a Disciplinary Commission, consisting of:
 - Thomas Bach (Chairman)
 - Gerhard Heiberg

- Frank Fredericks

The IOC President decided that the final decision in this case would be pronounced by the IOC Executive Board.

The Disciplinary Commission is to provide to the IOC Executive Board a report on the procedure conducted under its authority, including a proposal to the IOC Executive Board as to the measures and/or sanctions to be decided upon by the IOC Executive Board.

The IOC President has in this case decided that the procedure may be extended beyond the 24-hour time-limit as per Article 7.2.13 of the *Rules*.

11. Pursuant to Article 7.2.5 of the *Rules*, by letter dated 28 April 2009 notified to the Athlete, to the Secretary General of the National Olympic Committee ("NOC") of Italy, to the Union Cycliste Internationale (UCI) and to the Head of the Independent Observers' Programme (WADA), the IOC President advised of, among other things, the above-mentioned adverse analytical finding and that the Athlete had the option to attend a hearing of the Disciplinary Commission and/or to submit a defence in writing.

The analytical report of the laboratory analysis of the A sample, prepared by the Head of the LAAF LD and attached to the above-mentioned letter dated 28 April 2009, indicated the presence of the prohibited substance CERA.

12. The Athlete requested the opening and analysis of the B sample, which occurred on 28 May 2009, in Paris, at the LAAF LD, in the presence of the Athlete's representative, Dr. Douwe de Boer.

The B sample analysis result confirmed on 4 June 2009 the finding of the A sample analysis, indicating the presence of CERA in the B sample.

The A and B sample Laboratory Packages and certificates have been sent to the Athlete, through his attorney.

13. As the Athlete had requested to attend a hearing of the Disciplinary Commission, he has been informed by the IOC, by letter dated 9 June 2009, of the date of the hearing. All relevant parties have been informed accordingly as well.

The Athlete was also granted a deadline until 15 July 2009 to submit his defence in writing.

14. On 15 June 2009 and again on 9 July 2009, Mr. Rashid Ramzi's attorney sent letters on behalf of, by and through their undersigned counsel, Mr. Rashid Ramzi, Mr. Stefan Schumacher, Mr. Davide Rebellin and (for the letter of 15 June 2009 only) Ms. Yudelquis Contreras, requesting information and a number of documents from the IOC, including, but not limited to, "[A]ll documents relating to or concerning the collection of all blood, serum and/or urine samples taken from the Athletes during the Games of the XXIX Olympiad, Beijing 2008," and documents concerning the LAAF LD's CERA test method, and information regarding any testing, and the results of the testing, performed on other athletes' samples provided during the 2008 Olympic Games.

The IOC answered by providing relevant documentation and reminding the Athlete that a number of the requested documents were in the A and B sample Laboratory Packages, which were previously provided by the IOC.

In its letter dated 13 July 2009, the IOC provided the Athlete with the following documents relating to the validity of the method used by the LAAF LD:

- Attestation from Mrs. Françoise Lasne, Head of the Biology Section of the Analysis Department of the LAAFLLD;
- Attestation from Pr. Jacques de Ceaurriz, Director of the Analysis Department of the LAAFLLD;
- Attestation from Mr. Olivier Rabin, Scientific Director of WADA; and
- Attestation of accreditation from the Comité Français d'Accreditation ("COFRAC") for the LAAFLLD.

15. The Athlete made a written submission dated 14 July 2009.

In his written submission, the Athlete stated in summary, through his lawyer and Expert Consultant, Dr. Santo Davide Ferrara, that the burden of proof had not been met. In support of his defence, the Athlete stated, in summary, that:

- There were irregularities regarding the blood sample collection in Beijing and the chain of custody is deficient due to a lack of proper documentation;
- There is no way to be sure that the Athlete's A and B samples were not contaminated or manipulated during the collection and custody of the samples from Beijing to the LAD;
- Documentation indicates that LAD sent a frozen A sample to the LAAFLLD, however the LAAFLLD does not indicate whether the A sample was frozen upon receipt;
- The Athlete points out that 300 samples were temporarily missing in Beijing, which is indicative of procedural irregularities;
- On page 33 of the LAD A-sample laboratory document package, the signatures of analysts are missing;
- The analytical method for detecting CERA conducted by the LAAFLLD is unreliable, was not accredited at the time of the analyses of the Athlete's samples and has not officially been validated by anyone other than WADA;
- There is no data in scientific literature available regarding validation, specificity and sensitiveness of the CERA analytical method performed by the LAAFLLD;
- The LAAFLLD should have performed the analyses pursuant to TD2007EPO. However, the LAAFLLD also complied with TD2009EPO even though the B-sample analysis was performed before this technical document was in force.
- False positives are possible when using the TD 2009EPO v.1.0 method used by the LAAFLLD to test the B sample.

16. The Disciplinary Commission held a hearing on 27 July 2009 at approximately 11:00 am, at the IOC Headquarters in Vidy, Lausanne, in the Coubertin Room, in the presence of :

- Mr. Davide Rebellin, Athlete, assisted by his lawyers, Mr. Federico Cecconi, Mr. Fabio Pavone, Mr. Nicola Velati, and Mr. Paolo Martelli;
- Dr. Santo Davide Ferrara, medical expert;
- Mr. Fabio Filacomo, Anti-Doping Prosecutor's Office;
- Ms. Linda Canali, interpreter;

17. The Union Cycliste International (UCI) was represented at the hearing by Mr. Philippe Verbiest, and Ms. Anne Gripper.

18. Also attending the hearing were:

- Dr. Patrick Schamasch, Director of the IOC Medical and Scientific Department;
- Mr. Andre Sabbah and Mr. Christian Thill, IOC Legal Department;
- Dr. François Carrard, IOC Counsel;
- Dr. Martial Saugy, Director of the LAD;

– Ms. Soheyla Behnam, Ms. Cherine Fahmy and Ms. Sophie Berwick, IOC staff;

19. At the hearing, the Athlete stated that he was attending the hearing to demonstrate his innocence and non-involvement in any doping violation. The Athlete further stated that prior to going to Beijing for the Olympic Games, he had taken medication, both intravenously and orally, that had been approved and allowed by the federation and WADA, such as supplements and vitamins. The Athlete further stated that normally he would be informed about the medication, but that he simply had to trust the medical personnel. Through his lawyers, the Athlete reiterated the arguments he made in his written submission notably that the chain of custody was deficient, that the analytical method performed by the LAAFLD was not reliable and that no validation study existed at the time of the analyses. He noted in particular that documentation indicates that LAD sent a frozen A sample to the LAAFLD, however the LAAFLD does not indicate whether the A sample was frozen upon receipt. The Athlete also stated that on page 33 of the LAD report, the signatures of analysts were missing.
20. Upon hearing the Athlete and his lawyer, the Disciplinary Commission declared the hearing closed and informed the Athlete that a decision would be rendered in due course after the Panel took the time to consider and address the various issues at hand.
21. The Athlete contended that the IOC could not establish a chain of custody sufficient to verify the integrity of his samples. The alleged lack of documentation did not permit to ensure that the different couriers, laboratories or other persons did not adulterate, manipulate or contaminate the samples. After a careful review of all the documents relating to the chain of custody between the Doping Control Station, the Beijing Laboratory, the LAD and the LAAFLD, the Disciplinary Commission is satisfied that no departure from the ISL occurred. Moreover, even if such a deviation had occurred in the chain of custody, with the consequence of causing an alteration of the samples, such deviation and alteration could not have been the cause of a positive result. As Dr. Martial Saugy, Director of the LAD, explained during the hearing, since CERA is a very specific synthetic substance, it cannot appear in a blood sample through an alteration process of such sample. On the contrary, Dr. Saugy further explained that an alteration of a sample, due, for example, to insufficient cooling conditions during transport, would more likely lead to a false negative, as the alteration of the sample would eliminate the prohibited substance, rather than create it. Put another way, samples that are not properly transported would not create a false positive but might prevent an adverse analytical finding due to an elimination of the prohibited substance.
22. The Athlete pointed out that 300 samples went temporarily missing in Beijing, which is indicative of procedural irregularities. However, the Athlete does not show on a balance of probabilities that the samples in dispute were among those missing and that as a result a false positive occurred.
23. The Athlete pointed out that the A-sample analysis report indicates that the LAD sent a frozen A sample to the LAAFLD. However, the documentation of the LAAFLD does not mention that the A sample was still frozen upon receipt. Regarding this issue, the Disciplinary Commission was informed by Ms. Adeline Molina, of the LAAFLD, that the sample was frozen upon receipt and explained that she only forgot to check the corresponding box in the documentation. Moreover, Ms. Molina pointed out that she did check the box on page 18bis of the A laboratory document package, indicating that the sample was indeed frozen.
24. The Athlete also pointed out the missing signatures on the A laboratory document package of the screening that occurred in Lausanne. The Disciplinary Commission notes that the IOC received the unsigned A laboratory document package via email, and in the interest of informing the Athlete in a timely manner, sent the Athlete the unsigned

document package to allow the Athlete more time to prepare his defence. However, the original copy of the documentation package is duly signed by the analysts of the LAD.

25. The Athlete argues that the analyses of the A sample and B sample were performed outside the scope of accreditation of the LAAFLD. The Athlete submits that the LAAFLD was not permitted to use the analytical method in dispute before 31 May 2009, pursuant to the WADA 2009 Rules. The Athlete contends that, pursuant to this provision, a new analytical method should be validated by WADA before its implementation and that no study of validation has been provided to the Athlete.
26. After carefully considering the Athlete's arguments and the various complex issues at hand, and based on the testimony, documents and information available, the Disciplinary Commission noted that the LAAFLD performed an isoelectric focusing and immunodetection after immunoextraction method ("IEF method") in order to detect CERA, and further noted that the IEF method is not new, since it has been previously approved (since many years) for urine sample analyses. In this respect, the LAAFLD had been granted the accreditation ISO/IEC 17025 by the COFRAC.

According to article 4.4.10 ISL, "*WADA-Accredited Laboratories may modify or add analytes to existing scientific methods to expand their scope or develop new methods that involve technology already within the scope of accreditation without the need for approval by the body that completed the ISO/IEC 17025 accreditation of that Laboratory. To have a Flexible Scope of Accreditation, the laboratory must have within its quality management documentation processes for method validation/acceptance, competence of key personnel, record keeping and reporting*". In conformity with this provision, the LAAFLD could validly perform the IEF method, which is accredited for urine samples, to detect CERA in blood samples.

Pursuant to an attestation dated 10 September 2009 from Dr. Jacques de Ceaurriz, Director of the Analysis Department of the LAAFLD, the Disciplinary Commission noted that the validation study was completed by the LAAFLD on 25 September 2008.

Contrary to the Athlete's submission, the validation study was completed when the A and B samples analyses were performed; such analyses have therefore been conducted in compliance with the WADA 2009 Rules and art. 4.4.10 ISL.

Moreover, the extension of the IEF method for the detection of prohibited substances in blood samples was formally accredited by the COFRAC on 30 June 2009. This accreditation is a confirmation that the IEF method is recognised. The Disciplinary Commission is of the view that, pursuant to article 4.4.10 ISL, the IEF method could be validly performed on blood samples before the notification of the extension of the accreditation dated 30 June 2009 of the COFRAC, since it is not a new method but an application of a pre-existing method. The Disciplinary Commission also noted that this method had been published in a peer review, namely "haematologica" (2009; 94(6); p. 888-890).

In addition, the Disciplinary Commission took note of a decision dated 28 October 2009 (decision Nr. 327306 - publicly available on : <http://www.conseil-etat.fr/cde/node.php?articleid=1833>), in which the Conseil d'Etat of France rejected an appeal filed by Mr S. against the sanction ordered by the LAAFLD for an anti-doping rule violation for the presence of the prohibited substance CERA in his body during the 2008 Tour de France. The Conseil d'Etat held that the LAAFLD could retrospectively carry out analyses on samples already tested. Furthermore, the Conseil d'Etat held that accredited laboratories could use, in compliance with the International Standard for Laboratories, a method of analysis that had not been previously validated.

The Athlete alleged that the LAAFLLD improperly applied the WADA technical document TD 2009EPO v.1.0 to the testing of the B samples. In the Athlete's view, the TD2007EPO v. 2.0 should have been applied to both A and B samples analyses, respectively performed on January 17 and May 28, 2009, because the TD2009EPO entered into force on May 31, 2009 only.

The Disciplinary Commission holds that the argument does not stand. The WADA technical document TD 2009 EPO determining the criteria to be applied by all WADA-accredited laboratories to identify, in particular, CERA was finalized on April 1st, 2009 and had been written by C. Ayotte, J. A. Pascual, G. Gmeiner, C. Reichel, F. Lasne (of LAAFLLD) and M. Saugy (of LAD). The document was formerly approved by WADA Executive Committee on May 31st, 2009. Dr. F. Lasne had full knowledge of such criteria when the samples analyses were conducted as she was part of the team of scientists determining such criteria for the WADA technical document.

Furthermore, the new TD 2009 EPO was formerly approved when the analysis of the B Samples was conducted.

The Athlete alleged that false positives are possible when using the TD 2009EPO v.1.0 used by the LAAFLLD on the B sample, due to interferences with samples that are real positives for other substances of proteinic nature or through addition of possible interfering elements. As explained by Dr. Martial Saugy during the hearing, two different antibodies were used in the screening procedure performed by the LAD and in the analytical procedures conducted by the LAAFLLD. The Athlete's samples were positive by both analytical procedures despite the use of different antibodies. Mr Saugy explained that this excludes the possibility to have false positive results.

In addition, the kind of test performed by the LAAFLLD does not cross-react with any protein in the blood. The hypothesis of cross-reactivity can therefore be excluded.

Under these circumstances, the Disciplinary Commission is satisfied that a false positive result could not have occurred in the Athlete's case.

27. The Disciplinary Commission notes that several weeks have passed since the hearing. Given the serious nature of the case, the amount of documents in the file, and the technical nature of the information, it was necessary for the Disciplinary Commission to take the necessary time to carefully review and analyse the numerous documents, arguments and complex issues.
28. After carefully considering the Athlete's arguments and the various complex issues at hand, and based upon the testimony, documents and information available,, the Disciplinary Commission unanimously concludes that the Athlete has committed an anti-doping rule violation pursuant to Article 2.1 of the *Rules* in that there was the presence of the prohibited substance CERA in his body.

CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 23.2.1 thereof, and pursuant to the *IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008* and, in particular, Articles 2.1, 8 and 10 thereof

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
RECOMMENDS TO THE EXECUTIVE BOARD

- I. The Athlete, Davide Rebellin, Italy, Cycling:
 - (i) be disqualified from the Men's Cycling Road event of the Beijing 2008 Olympic Games, where he had placed 2nd.
 - (ii) shall have his medal and diploma in the above-mentioned event withdrawn.
- II. The UCI is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The NOC of Italy is ordered to return to the IOC, as soon as possible, the medal and diploma awarded to the Athlete in relation to the above-mentioned event.
- IV. The NOC of Italy shall ensure full implementation of this decision.

Lausanne, _____ November 2009

The IOC Disciplinary Commission

Thomas BACH
Chairman

Gerhard HEIBERG

Frank FREDERICKS