

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
ICE HOCKEY UK**

Before:

Charles Hollander QC
Colin Murdock
Professor Brian Lunn

BETWEEN:

UK ANTI-DOPING LIMITED (“UKAD”)

Anti-Doping Organisation

and

ANTHONY DE LUCA

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

INTRODUCTION

1. Mr Anthony De Luca is a professional ice hockey player. Mr De Luca was registered as a player for Sheffield Steelers. Sheffield Steelers are a professional ice hockey team who play in the Elite Ice Hockey League (“EIHL”). The EIHL is the highest level of ice hockey competition in the UK. Ice Hockey UK (“IHUK”) is the National Governing Body

for the sport of ice hockey in the UK. IHUK has adopted the UK Anti-Doping Rules as its Anti-Doping Rules (“ADR”).

2. Pursuant to the ADR, on 26 September 2021 Mr De Luca was tested In-Competition at the game between Sheffield Steelers and Cardiff Devils at the Utilita Arena, Broughton Lane, Sheffield. Mr De Luca’s Sample returned an Adverse Analytical Finding (“AAF”) for carboxy-THC, a metabolite of Δ 9-tetrahydrocannabinol (“THC”), the psychoactive compound found in cannabis, at an estimated concentration of 295 ng/mL. THC is classified as a Cannabinoid under section S8 of the 2021 WADA Prohibited List. It is a Specified Substance that is prohibited In-Competition only.
3. UKAD notified and subsequently charged Mr De Luca with violations of ADR Article 2.1, in that a Prohibited Substance or its Metabolites or Markers were present in his A Sample, and ADR Article 2.2, in that he Used a Prohibited Substance, namely carboxy-THC, on 26 September 2021. This is the first occasion that Mr De Luca has been charged with any Anti-Doping Rule Violation (“ADRV”).
4. In his response to the charge, Mr De Luca admitted the ADRV pursuant to ADR Article 2.1, but asserted that the AAF resulted from his Out-of-Competition Use of cannabis. On this basis, Mr De Luca denied the ADRV pursuant to ADR Article 2.2.
5. Mr De Luca also asserted that pursuant to ADR Article 10.2.4, he should receive a reduced period of Ineligibility, in that he alleged that the AAF results from his Use of cannabis Out-of-Competition and in a context unrelated to sport performance.
6. Jurisdiction is not disputed in this matter. Mr De Luca was registered as a player with Sheffield Steelers at all material times and was participating in Competitions authorised by IHUK.
7. ADR Article 2.1 states:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4.

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Sample. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed.

2.1.2 Proof of any of the following to the standard required by Article 8.4.1 is sufficient to establish an Article 2.1 Anti-Doping Rule Violation:

(a) An Adverse Analytical Finding of the presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where the Athlete waives analysis of the B Sample and so the B Sample is not analysed...

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an Article 2.1 Anti-Doping Rule Violation."

8. ADR Article 2.2 states:

"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.2 Anti-Doping Rule Violation of Use has been committed.

... 2.2.4 Out-of-Competition Use of a substance that is only prohibited In-Competition is not an Article 2.2 Anti-Doping Rule Violation. If, however, an Adverse Analytical Finding is reported for the presence of such substance or any of its Metabolites or Markers in a Sample collected In-Competition, that may amount to an Article 2.1 Anti-Doping Rule Violation.”

9. ADR Article 10.2.4(a) states:

“10.2.4 Notwithstanding any other provision in Article 10.2, where the Anti-Doping Rule Violation involves a Substance of Abuse:

(a) If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, the period of Ineligibility shall be three (3) months; provided that it may be further reduced to one (1) month if the Athlete satisfactorily completes a Substance of Abuse treatment program approved by UKAD. The period of Ineligibility established in this Article 10.2.4(a) is not subject to any reduction pursuant to Article 10.6.”

10. Given the date of the game on 26 September 2021, “In-Competition” means any time after 23:59 on 25 September 2021 and Out-of-Competition means before then.

11. Mr De Luca’s position was straightforward. He is from Canada where cannabis use has been lawful since 2018. He is used to ingesting cannabis every day in Canada. He returned from Canada to England on 10 September 2021. He played for Sheffield Steelers on 26 September 2021 and was tested on that day. His evidence was that he had not used cannabis after his arrival in England.

12. The questions for us were therefore as follows:

- a. Under ADR Articles 2.1 and 10.2.4(a) has Mr De Luca shown that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance.
- b. Under ADR Article 2.2 has UKAD shown Use by the Player In-Competition.

13. In addition to Mr De Luca's evidence, we heard from Professor David Cowan, who is well known as the doyen of sports medicine in this country. Professor Cowan said it was difficult to reach firm conclusions because he did not know the precise amounts of cannabis ingested. However in his view and having considered the levels of cannabis found in Mr De Luca's system when tested on 26 September 2021:

- a. The suggestion that they were attributable to cannabis ingested only before 10 September 2021 was unlikely.
- b. He could not say from the results whether Mr De Luca had used cannabis after 23:59 on 25 September 2021; on the basis of the analysis of the test he said it was "50/50."

14. We also noted Mr De Luca's indignant denial that he would use cannabis on the eve of or day of a match. He said he was an experienced professional and he considered it would be likely to adversely affect his performance if he did so.

DISCUSSION

15. There was no material on which we could be satisfied that Mr De Luca had used cannabis after 23:59 on 25 September 2021 and we find that UKAD have not satisfied their burden of proof in that regard.

16. We accept Mr De Luca's denial that he used cannabis after 23:59 on 25 September 2021 and find that he has satisfied the burden on him under ADR Articles 2.1 and 10.2.4(a). We should add that in the light of Professor Cowan's evidence, we would not be minded to accept Mr De Luca's evidence that he did not use cannabis at any time after his arrival in England on 10 September 2021, but that is not the issue before us.

17. Although Mr De Luca was provisionally suspended by UKAD on 8 December 2021, he continued to play professionally in Canada thereafter. His evidence was that he made enquiries in Canada as to the effect of the Provisional Suspension and was told that it

could not affect his playing there, although they could not speak for the position in the UK, and thus he continued playing notwithstanding UKAD writing to him to say he could not play in Canada whilst the Provisional Suspension continued. The consequence of what amounts to a breach of UKAD rules is that he is not entitled to credit against his sanction for time spent during the period of Provisional Suspension.

18. It follows from the above that the period of sanction is three months; provided that it may be further reduced to one month if Mr De Luca satisfactorily completes a Substance of Abuse treatment program approved by UKAD.

THE DECISION

19. We find:

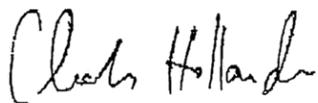
- a. Charge 1 (violation of ADR Article 2.1, in that a Prohibited Substance or its Metabolites or Markers were present in his A Sample) proved.
- b. Charge 2 (violation of ADR Article 2.2, in that he Used a Prohibited Substance, namely carboxy-THC) not proved.

20. The period of Ineligibility is three months from receipt of this decision, provided that it may be further reduced to one month if Mr De Luca satisfactorily completes a Substance of Abuse treatment program approved by UKAD.

RIGHT OF APPEAL

21. In accordance with Article 13.5 of the NADP Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

22. Pursuant to ADR Article 13.4.2(b), the Appeal should be filed to the National Anti-Doping Panel, located at Sport Resolutions, 1 Paternoster Lane, London, EC4M 7BQ (resolve@sportresolutions.com).



Charles Hollander QC

Chair, on behalf of the Panel

London, UK

21 June 2022

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