

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND HINEWAI HAUSMAN

Respondent

**DECISION OF THE TRIBUNAL
26 July 2023**

**Hearing At the agreement of the parties this decision was made on the
papers**

**Parties Hayden Tapper, Drug Free Sport New Zealand
Kate Hursthouse, counsel for Applicant
Hinewai Hausman, Respondent
Nick Elsmore, counsel for Respondent**

**Panel Warwick Smith, (Acting Chair)
Pippa Hayward, Member**

Registrar Helen Gould

1. Hinewai Hausman (Ms Hausman) is a New Zealand power lifter who was sanctioned with a four-year period of ineligibility commencing on 13 April 2019 for admitting the presence of clenbuterol following an adverse analytical finding and proceedings brought to the Tribunal by Drug Free Sport New Zealand (DFSNZ).
2. Rule 10.14.1 of the Sports Anti-doping Rules (SADR) provides that DFSNZ can test an athlete at any time during the period of ineligibility. Accordingly, Ms Hausman was tested by DFSNZ on 4 April 2023, nine days before her period of ineligibility was due to expire. That test showed the presence of prohibited non-specified substances: Drostanolone, Norandrosterone, Oxandrolone and Metenolone.
3. Ms Hausman was provisionally suspended, without opposition, on 23 June 2023 following an application from DFSNZ.
4. Ms Hausman confirmed via her counsel that she did not wish to have her 'B' sample tested.
5. Timetabling directions were issued on 29 June 2023 to progress the case.
6. DFSNZ filed its Form 1 and supporting material on 7 July 2023 and Ms Hausman filed her Form 2 on 13 July 2023.
7. Ms Hausman admitted the Anti-doping Rule Violation (ADRV) and stated she did not want to participate further in the proceedings and would accept the sanction the Tribunal imposes.
8. The Tribunal ascertained that DFSNZ did not see the need for a hearing. The Tribunal's task is accordingly to set the appropriate sanction.

Rules regarding sanction

9. The admitted violations are Ms Hausman's second ADRVs and as such she is subject to SADR 10.9.1 which provides that the sanction for a second violation shall be the greater of:
 - (a) A six-month period of Ineligibility; or
 - (b) A period of Ineligibility in the range between:

(i) the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, and

(ii) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.

The period of Ineligibility within this range is to be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation.

10. Ms Hausman chose not to make arguments, or put forward supporting evidence, to take advantage of the provisions of SADR 10.5, 10.6 or 10.7.

11. The provisions of SADR 10.8.1 may apply to Ms Hausman. That Rule provides:

Where an Athlete or other Person, after being notified by DFSNZ of a potential anti-doping rule violation that carries an asserted period of Ineligibility of four or more years (including any period of Ineligibility asserted under Rule 10.4), admits the violation and accepts the asserted period of Ineligibility no later than 20 days after receiving notice of an anti-doping rule violation charge, the Athlete or other Person may receive a one-year reduction in the period of Ineligibility asserted by DFSNZ. Where the Athlete or other Person receives the one-year reduction in the asserted period of Ineligibility under this Rule 10.8.1, no further reduction in the asserted period of Ineligibility shall be allowed under any other Rule.

Discussion

12. The Tribunal must apply Rule 10.9.1(b) to Ms Hausman.

13. Under Rule 10.9.1 (b) (i), the period of ineligibility is the sum of (i) the period imposed on the first violation (in this case 4 years) and (ii) the period of ineligibility applicable to the second violation, treated as if it were a first violation (also 4 years in this case, under Rule 10.2). The result under Rule 10.9.1 (b) (i) would therefore be a period of 8 years' ineligibility.

14. The result is the same under Rule 10.9.1 (b) (ii). If the second violation is treated as a first violation, the period of ineligibility for that violation under Rule 10.2 is 4 years. Twice 4 years is 8 years.

15. There is therefore no “range” between the periods of ineligibility under the Rules 10.9.1 (b) (i) and (ii), within which the discretion to take into account the entirety of the circumstances and / or the athlete’s degree of fault with respect to the second violation, could operate.
16. The only discretion available to the Tribunal is that provided for in Rule 10.8.1. The Tribunal is satisfied that jurisdiction exists to grant Ms Hausman relief under that section, as she admitted the alleged rule violations within 20 days after receiving notice of the anti-doping rule violation charges, and within the same period she accepted, through her counsel, “the sanction that the Tribunal imposes”. In circumstances where DFSNZ had asserted a period of 8 years’ ineligibility, and that was the only period the Tribunal *could* impose under SADR, the Tribunal considers that Ms Hausman has sufficiently “accepted” the period of ineligibility asserted by DFSNZ for the purposes of Rule 10.8.1.
17. On the application of Rule 10.8.1, the Tribunal notes that Ms Hausman had all but served her four-year period of ineligibility for the first violation, indeed she was just nine days short of completing the sanction period. There is nothing to suggest that during that four-year period she competed or participated in any sport that was subject to the SADR. In addition, during the period of her ineligibility Ms Hausman retired from powerlifting. On this basis the Tribunal is prepared to apply Rule 10.8.1 and reduce her sanction by one year.

Conclusion

18. In light of Ms Hausman’s early admission and acceptance of her sanction, applying SADR 10.9.1(b) and taking into account the matters referred to in paragraph 17 above, the sanction shall be a period of ineligibility of seven years.

Orders

19. The Tribunal **orders** as follows:
 - (i) A period of ineligibility from participation in any capacity in a competition or activity organised, sanctioned, or authorised by any sporting organisation that is a signatory to the SADR, of seven years, is imposed

on Ms Hausman under Rules 10.8.1 and 10.9.1, backdated to commence from 23 June 2023. That means she is ineligible to participate in competitive sports until 23 June 2030.

- (ii) Costs are not ordered, as none are sought, but they are reserved should DFSNZ wish to apply.
- (iii) This determination should be the final determination by the Tribunal in this matter, and it may be published in the usual way.

Dated: 26 July 2023.



Warwick Smith
Acting Chair



Pippa Hayward
Member