

In the matter between:

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT (SAIDS)

and

CHERYL ANN EDELKRAUT

SAIDS/2017/34

In re: ALLEGED VIOLATION OF ANTI-DOPING RULE IN TERMS OF ARTICLE 2.1 OF THE 2016

ANTI-DOPING RULES OF SAIDS

ANTI-DOPING TRIBUNAL FINDINGS AND SANCTION

A INTRODUCTION

1. The South African Institute for Drug Free Sport (SAIDS) has responsibility and authority in respect of anti-doping measures in South Africa. Ms Cheryl Ann Edelkraut plays bowls and participated in the South African Mixed Pairs Championship under the jurisdiction of Bowls South Africa (“BSA”) on 24 June 2017. These proceedings are therefore governed by the South African Institute for Drug Free Sport Anti-Doping Rules 2017. Federations and athletes are subject to the jurisdiction of SAIDS in terms of Article 1 of the Anti-Doping Rules 2017 and must comply with the Anti-Doping Rules in terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No 14 of 1997.
2. An Independent Doping Hearing Panel was convened by SAIDS in terms of Article 8.1 of the Anti-Doping Rules 2017 in order to determine whether, in this case, a doping violation in terms of the SAIDS Rules and as embodied in the charge set out below, was committed by Ms Edelkraut.
3. Ms Edelkraut was advised that a doping hearing would be convened for **Thursday, 23 November 2017** to hear the charges against her. She was also advised that she was entitled to be legally represented.

4. **The Doping Hearing Panel comprised of:**
Prof Rian Cloete, Chairperson
Mr Wergele McKenzie, Sports Administrator Representative
Dr Dimakatso Ramagole, Medical Doctor

B THE HEARING

5. The hearing was duly convened on **Thursday, 23 November 2017** at 17h00 at the Holiday Inn Express, the Zone, Oxford Road, Rosebank, Johannesburg, and the hearing was as far as possible conducted in an informal manner.
6. SAIDS was represented at the hearing by Ms Wafeekah Begg (Prosecutor), who was charged with the duty of prosecuting Ms Edelkraut.
7. Ms Edelkraut had no legal representation, but was assisted by Mr Trevor Davis from Bowls South Africa at the hearing.
8. There were no witnesses called at the hearing for either SAIDS or Ms Edelkraut. The hearing proceeded in the presence of the members of the Tribunal, the Prosecutor, Ms Edelkraut and Mr Trevor Davis.
9. Evidence tabled before the Tribunal consisted of:
 - 9.1 The notification of the adverse analytical finding (sample number 4013170) dated 8 August 2017;
 - 9.2 Adverse Analytical Finding;
 - 9.3 The Doping Control Form dated 24 June 2017;
 - 9.4 Analytical Test Report Urine: A sample Analysis;
 - 9.5 The Chain of Custody Form;
 - 9.6 The exchange of correspondence between Ms Edelkraut and SAIDS;
 - 9.7 Therapeutic use exemption (TUE) application with supporting documents.

C THE CHARGE

10. On 6 November 2017, Ms Cheryl Ann Edelkraut (“Edelkraut”), a bowler who participated in the South African Mixed Pairs Championship under the jurisdiction of Bowls South Africa (“BSA”) on 24 June 2017, was served a written charge as follows:

“On the 24th June 2017, you provided a urine sample (4013170) during an in-competition test. Upon analysis, the Anti-Doping Laboratory in Gent reported the presence of prohibited substances in your urine sample. The substance identified in

*your sample was Hydrochlorothiazide and its metabolite, 4-amino-6-chloro-1-3-bezenedisulfonamide, chlorothiazide as well as the Stimulant, Cathine in your A sample. Hydrochlorothiazide and its metabolite, 4-amino-6-chloro-1-3-bezenedisulfonamide and chlorothiazide is categorised under **Class S.5 – Diuretics** and Cathine is categorised under **Class S.6 Stimulants** on the World Anti-Doping Code 2017 Prohibited List International Standard.”*

11. Ms Edelkraut was notified of the adverse analytical finding on 8 August 2017. She was further informed that she was entitled to have her “B” sample analysed and she should indicate this timeously.
12. The adverse analytical finding of the “A” sample was never disputed by Ms Edelkraut before the hearing and an analysis of the “B” sample was not requested.
13. SAIDS further notified Ms Edelkraut on 8 August 2017 that after consultation with the SAIDS Doping Control Review Commission (DCRC) that she may apply for a Therapeutic Use Exemption (TUE).
14. Ms Edelkraut applied on 11 August 2017 for a retroactive TUE for hydrochlorothiazide.
15. The following submissions were made by Ms Edelkraut:
 - 15.1 Her medical doctor, Dr Jordaan, prescribed Enap-Co to control her high blood pressure and they were both unaware that the medication was on the prohibited list;
 - 15.2 She is 60 years old and plays bowls for recreational purposes;
 - 15.3 She has been using the medication since 2004 and does not dispute taking the medication.
15. SAIDS informed Ms Edelkraut on 7 September 2017 that her TUE application (1708-02) did not meet the SAIDS and World Anti-Doping Agency (WADA) approval criteria for the above-mentioned substance and was therefore denied.
16. Ms Edelkraut filed a notice of appeal on 20 September 2017 which she later withdrew.
17. In order to establish the anti-doping rule violation, it is necessary to set out herein Article 2.1 which read as follows:

“2.1 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 rule violation under Article 2.1”

18. In order to secure a guilty verdict from the Doping Hearing Panel, the Prosecution needs to discharge the burden of proof as contemplated in Article 3.1 of the Rules. It states the following:

“3.1 Burdens and Standards of Proof

SAIDS shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. The standard of proof in all cases is *greater than a mere balance of probability but less than proof beyond a reasonable doubt*.

19. A Doping Control Form (72134) was handed into evidence with test mission code 27/17 by SAIDS for the in-competition testing of Ms Edelkraut. This form was signed by the athlete on the 24th of June 2017 acknowledging that she had read the notice, been notified of her selection and gave her consent to provide samples for anti-doping research that was presented into evidence.
20. Ms Edelkraut declared on the Doping Control Form that on 24 June 2017 she consumed the following medication and supplements: Enap-Co, Stilpayne, Panados, Dormicam, Omega, Relislim, Multi-Vitamins and Vitamin C.
21. The Anti-Doping Laboratory in Gent reported on 18 July 2017 the presence of a prohibited substance in the urine sample (4013170) of Ms Edelkraut. The substance identified in her sample was *Hydrochlorothiazide and its metabolite, 4-amino-6-chloro-1-3-bezenedisulfonamide, chlorothiazide as well as the Stimulant, Cathine in your A sample. Hydrochlorothiazide and its metabolite, 4-amino-6-chloro-1-3-bezenedisulfonamide and chlorothiazide is categorised under **Class S.5 – Diuretics** and Cathine is categorised under **Class S.6 Stimulants** on the World Anti-Doping Code 2017 Prohibited List International Standard*. The “A” sample test results is therefore *prima facie* a contravention of Article 2.1 of the Anti-Doping Rules.
22. In terms of Article 3.2.2 it is presumed that WADA accredited laboratories conducted sample analysis and custodial procedures in accordance with the international standard for laboratories.
23. Ms Edelkraut did not request a “B” sample analysis, never suggested that there has been any departure from the prescribed international standard nor challenged or disputed the adverse analytical finding. She is consequently deemed under the SAIDS Anti-Doping Rules to have committed an Anti-Doping Rules Violation.

D THE VERDICT

24. The Doping Hearing Panel is satisfied that Ms Edelkraut is indeed guilty of violating Article 2.1 of the 2017 Anti-Doping Rule of the South African Institute for Drug-Free Sport (SAIDS) as particularised in the charge sheet served on Ms Edelkraut on 6 November 2017.

E THE SANCTION

25. The remaining question is the nature of the sanction which should be imposed in respect of the violation of Article 2.1.1 of the Rules.

26. Article 10.2 of the Rules is headed "***Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance and Prohibited Method***"

Article 10.2.1 provides that the period of *Ineligibility* shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and SAIDS can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of *Ineligibility* shall be two (2) years.

10.2.3 ... the term intentional is meant to identify those athletes who cheat. The term therefore requires that the athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

27. SAIDS conceded in their submissions that Ms Edelkraut had no intention to cheat and that article 10.2.2 is applicable.

28. The substances found to be present are prohibited substances under the 2017 Prohibited List World Anti-Doping Code and are categorised under **Class S.5 – Diuretics and Masking Agents and S.6 Stimulants** on the World Anti-Doping Code 2017 Prohibited List International Standard.

29. The substances identified in her sample was *hydrochlorothiazide and its metabolite, 4-amino-6-chloro-1-3-benzenedisulfonamide, chlorothiazide* which are categorised under **Class S.5 – Diuretics** as well as the stimulant, *Cathine* which is categorised under **Class S.6 Stimulants** on the World Anti-Doping Code 2017 Prohibited List International Standard. These are specified substances for purposes of the Anti-Doping Rules in terms of Article 4.2.2.

F REDUCTION OF THE PERIOD OF INELIGIBILITY: CONSIDERATIONS IN MITIGATION

30. Article 10.5 is headed "***Reduction of the Period of Ineligibility based on No Significant Fault or Negligence***"

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other person can establish No Significant Fault or Negligence, then the period of ineligibility shall be, at the minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

31. Ms Edelkraut's degree of fault is in the Panel's view the key issue. What degree of fault can be attributed to Ms Edelkraut?
32. Ms Edelkraut testified that she received an email (dated 20 June 2017) from Bowls South Africa the evening before the championship. Attached to the email was Circular 32/2017 titled "Drug testing & Accountability". Ms Edelkraut immediately conducted her own research and found that her medication (Enap-Co) contained a prohibited substance. She acted on the misconception that if she did get tested, she could simply apply for a retroactive TUE which will automatically be granted.
33. On Ms Edelkraut's own version, she admitted that she was at fault. Ms Edelkraut should have and must have known that she should be more cautious and to first check that she would not fall foul of the SAIDS Anti-Doping Rules. Ms Edelkraut's reliance on her doctor's unawareness of a prohibited list and her unawareness of TUE's does not render her faultless.
34. She had access to many resources such as WADA or SAIDS, Bowls South Africa and their circulars they send to the districts who in turn communicate the circulated information to their members.
35. Ms Edelkraut clearly violated the SAIDS Rules as the Rules are applied in terms of strict liability and she knew the evening before the championship that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk and nevertheless proceeded to participate in the competition. She has not exercised "the greatest vigilance" or "the utmost caution" and committed a fault. [See CAS 2006/A/1133 *WADA v Stauber & Swiss Olympic* para 37].
36. This Panel must however have regard for the circumstances in which the violation took place and special considerations such as:
 - 36.1 Ms Edelkraut has been using prescribed chronic medication (Enap-Co) since 2004;
 - 36.2 She has been playing recreational bowls since 2003 and has never been tested before;
 - 36.3 Ms Edelkraut's doctor was unaware that she participated in bowls; and
 - 36.4 The fact that it was almost coincidence that she qualified to participated in the SA Championship.

- 36.4 The fact that it was almost coincidence that she qualified to participated in the SA Championship.
37. Arguments presented also showed that Bowls South Africa sadly failed Ms Edelkraut and shirk their responsibilities under the anti-doping rules. It is an imperative necessity that Bowls South Africa improve their communication and player education. The majority of their registered players are at risk due to their age profile. Substances on the Prohibited List not only violates the spirit of sport, but more importantly also represents an actual or potential health risk to the athlete.
38. In determining the degree of fault, this Panel applied the three categories of fault as considered in the matter of *Cilic v ITF* (CAS 2013/A/2237), namely (a) significant degree of fault, (b) normal degree of fault, and (c) light degree of fault. In applying these three categories to the possible sanction range of 0-24 months, this Panel found that Ms Edelkraut fell within the "light degree of fault" range.

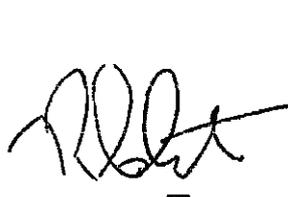
G DECISION

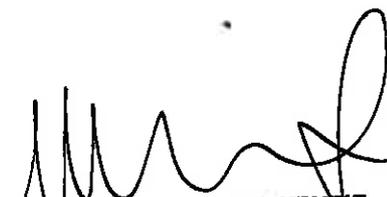
39. After due consideration of the specific facts of this case, the Panel finds that Ms Edelkraut did fall short of the high standards imposed on an athlete to exercise utmost caution to avoid an anti-doping rule violation.
40. The Doping Hearing Panel hereby declares Ms Edelkraut **ineligible for a period of four (4) months with effect from 19 August 2017** (being the date on which she last played competitive bowls).
41. Ms Edelkraut further forfeits any results, medals and prizes obtained in the South African Mixed Pairs Championship under the jurisdiction of Bowls South Africa ("BSA") on 24 June 2017 in terms of Article 10.1 of the Rules.

Accordingly the Doping Hearing Panel's sanction is as follows:

"Having found Ms Cheryl Ann Edelkraut, guilty of an Anti-Doping Rule violation in terms of Article 2.1 of the 2017 Anti-Doping Rule of the South African Institute for Drug-Free Sport (SAIDS) as particularised in the charge sheet served on Ms Edelkraut on 6 November 2017, Ms Edelkraut is hereby declared ineligible to participate in any competition or other activity as contemplated in Article 10.11.1 for a period of four (4) months with effect from 19 August 2017."

DATED at JOHANNESBURG this 2nd day of December 2017.


PROF RIAN CLOETE


MR WERGELE MCKENZIE


DR DIMAKATSO RAMAGOLE