

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

Charles Hollander QC (Chair)
Hannu Kalkas
Dr Tanja Haug

BETWEEN:

World Athletics

Anti-Doping Organisation

and

Christian Coleman

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

The Charge

1. Christian Coleman (“the Athlete”) is a 24 year old US track and field athlete, specialized in the 100m event. He is the current men’s 100m world champion and world indoor record holder for the 60m dash. He has been in the Registered Testing Pool since at least 2016 and has also received anti-doping education for a number of years.

2. Pursuant to a Notice of Charge dated 16 June 2020 (“the Charge”), the Athlete was charged by the Athletics Integrity Unit (“AIU”) (on behalf of World Athletics) with an Anti-Doping Rule Violation (“ADRV”) in connection with Whereabouts Failures within the meaning of Rule 2.4 of the World Athletics Anti-Doping Rules in force from 1 November 2019 (the “World Athletics Rules”), for:
 - a. a Missed Test dated 16 January 2019;
 - b. a Filing Failure in connection with a test attempt on 26 April 2019 (effective 1 April 2019);
and,
 - c. a Missed Test dated 9 December 2019.
3. The Athlete did not contest the 16 January 2019 Missed Test but contested the 26 April 2019 Filing Failure and the 9 December 2019 Missed Test.
4. For the avoidance of doubt, there is no suggestion that the Athlete has ever taken any Prohibited Substance and we wish to make that clear at the outset.
5. The hearing was held on 9 October 2020 via video-conference. The AIU was represented by Mr Ross Wenzel. The Athlete was represented by Mr Howard Jacobs.
6. We heard oral evidence from Mr Brian George (Doping Control Officer (“DCO”)), Ms Erin Freese (Blood Collection Assistant), Mr Willie Newman (DCO), and Mr Raphaël Roux (AIU Out of Competition Testing Manager). The Athlete himself gave evidence and led unchallenged evidence from Mr Tim Hall.
7. The Panel confirms that it has carefully considered and taken into account in its award all of the evidence, submissions, and arguments presented by the parties, even if they have not been specifically mentioned or summarized in this arbitral award.

Jurisdiction

8. There was no dispute as to the Panel's jurisdiction over the case, nor were issues raised by the Athlete with respect to the authority of the AIU or the application of the World Athletics Rules to this matter.

9. Rule 8.1(a) of the World Athletics Rules sets out that the Tribunal shall have jurisdiction over all matters in which:

(a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;

10. Rule 1.8 of the World Athletics Rules sets out the criteria for International-Level Athletes and includes:

(a) An Athlete who is in the International Registered Testing Pool;

...

(c) Any other Athlete whose asserted Anti-Doping Rule Violation results from (i) Testing conducted under the Testing Authority of World Athletics;

11. Rule 1.8(a) and Rule 1.8(c) of the World Athletics Rules, provide that athletes in the International Registered Testing Pool and those subject to Testing under the authority of World Athletics are International-Level Athletes.

12. The Athlete is an International-Level Athlete and the Tribunal has jurisdiction to hear and determine the Anti-Doping Rule Violation alleged against the Athlete, pursuant to Rule 8.1(a) of the World Athletics Rules.

Whereabouts Requirements

13. Given the nature of the issues in the case, it is necessary to set out the relevant rules in detail.

14. Rule 2.4 of the World Athletics Rules provides that the following shall constitute an Anti-Doping Rule Violation:

2.4 Whereabouts Failures

Any combination of three Missed Tests and/or Filing Failures as defined in the International Standard for Testing and Investigations, within a twelve-month period, by an Athlete in a Registered Testing Pool.

15. Annex I of the International Standard for Testing and Investigations (“ISTI”) details an athlete’s individual whereabouts responsibilities as follows:

I.1.1 An Athlete who is in a Registered Testing Pool is required:

a) to make quarterly Whereabouts Filings that provide accurate and complete information about the Athlete’s whereabouts during the forthcoming quarter, including identifying where he/she will be living, training and competing during that quarter, and to update those Whereabouts Filings where necessary, so that he/she can be located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in Article I.3. A failure to do so may be declared a Filing Failure; and

b) to specify in his/her Whereabouts Filings, for each day in the forthcoming quarter, one specific 60-minute time slot where he/she will be available at a specific location for Testing, as specified in Article I.4. This does not limit in any way the Athlete’s Code Article 5.2 obligation to submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing Authority over him/her. Nor does it limit his/her obligation to provide the information specified in Article I.3 as to his/her whereabouts outside that 60-minute time slot. However, if the Athlete is not available for Testing at such location during the 60-minute time slot specified for that day in his/her Whereabouts Filing, that failure may be declared a Missed Test.

[Comment to I.1.1(b): The purpose of the 60-minute time slot is to strike a balance between the need to locate the Athlete for Testing and the impracticality and unfairness of making Athletes potentially accountable for a Missed Test every time they depart from their previously-declared routine. Anti-Doping Organizations that implemented whereabouts systems in the period up to 2009 reflected that tension in different ways. Some demanded “24/7” whereabouts information, but did not declare a Missed Test if an Athlete was not where he/she had said he/she would be unless (a) he/she could

still not report for Testing despite being given notice in the form of a phone call; or (b) the following day he/she was still not where he/she had said he/she would be. Others asked for details of the Athlete's whereabouts for only one hour per day, but held the Athlete fully accountable during that period, which gave each side certainty but limited the Anti-Doping Organization's ability to test the Athlete outside that hour. After extensive consultation with stakeholders with substantial whereabouts experience, the view was taken that the best way to maximize the chances of finding the Athlete at any time, while providing a reasonable and appropriate mitigation of "24/7" Missed Test liability, was to combine the best elements of each system, i.e., requiring disclosure of whereabouts information on a "24/7" basis, while limiting exposure to a Missed Test to a 60-minute time slot.]

16. Art. I.3 of the ISTI sets out a specific obligation on an athlete to provide their whereabouts information in a Whereabouts Filing as follows:

I.3.1 On a date specified by the Anti-Doping Organization collecting an Athlete's Whereabouts Filings – which date shall be prior to the first day of each quarter (i.e., 1 January, 1 April, 1 July and 1 October, respectively) – an Athlete in a Registered Testing Pool must file a Whereabouts Filing that contains at least the following information:

a) a complete mailing address where correspondence may be sent to the Athlete for formal notice purposes. Any notice or other item mailed to that address will be deemed to have been received by the Athlete five working days after it was deposited in the mail;

[Comment to I.3.1(a): For these purposes, the Athlete should specify an address where he/she lives or otherwise knows that mail received there will be immediately brought to his/her attention. An Anti-Doping Organization is encouraged also to supplement this basic provision with other notice and/or "deemed notice" provisions in its rules (for example, permitting use of fax, email, SMS text or other methods of service of notice; permitting proof of actual receipt as a substitute for deemed receipt; permitting notice to be served on the Athlete's National Federation if it is returned undelivered from the address supplied by the Athlete). The aim of such provisions should be to shorten the results management timelines.]

b) details of any impairment of the Athlete that may affect the procedure to be followed in conducting a Sample Collection Session;

c) *specific confirmation of the Athlete's consent to the sharing of his/her Whereabouts Filing with other Anti-Doping Organizations that have Testing Authority over him/her;*

d) *for each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc);*

e) *for each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g. school), as well as the usual time- frames for such regular activities; and*

[Comment to I.3.1(e): This requirement applies only to activities that are part of the Athlete's regular routine. For example, if the Athlete's regular routine includes training at the gym, the pool and the track, and regular physio sessions, then the Athlete should provide the name and address of the gym, track, pool and physio in his/her Whereabouts Filing, and then set out his/her usual routine, e.g., "Mondays: 9-11 gym, 13-17 gym; Tuesdays: 9-11 gym, 16-18 gym; Wednesdays: 9-11 track, 3-5 physio; Thursdays: 9-12 gym 16-18 track; Fridays: 9-11 pool 3-5 physio; Saturdays: 9-12 track, 13-15 pool; Sundays: 9-11 track, 13-15 pool".

If the Athlete is not currently training, he/she should specify that in his/her Whereabouts Filing and detail any other routine that he/she will be following in the forthcoming quarter, e.g., his/her work routine, or school schedule, or rehab routine, or other routine, and identify the name and address of each location where that routine is conducted and the time-frame during which it is conducted.

In the case of a Team Sport or other sport where competing and/or training are carried out on a collective basis, the Athlete's regular activities are likely to include most if not all Team Activities.]

a) *the Athlete's Competition schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete during the quarter and the date(s) on which he/she is scheduled to compete at such location(s).*

17. Where the information provided by an athlete in a Whereabouts Filing becomes inaccurate or incomplete, including in relation to the 60-minute time slot, then an athlete must update that information as soon as possible after the circumstances change:

1.3.5 Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article 1.3.4, the Athlete must file an update so that the information on file is again accurate and complete. In particular, the Athlete must always update his/her Whereabouts Filing to reflect any change in any day in the quarter in question (a) in the time or location of the 60-minute time slot specified in Article 1.3.2; and/or (b) in the place where he/she is staying overnight. The Athlete must file the update as soon as possible after the circumstances change, and in any event prior to the 60-minute time slot specified in his/her filing for the day in question. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5. In any event, the Anti-Doping Organization shall consider Target Testing of the Athlete.

[Comment to 1.3.5: The Anti-Doping Organization collecting the Athlete's Whereabouts Filings should provide appropriate mechanisms (e.g., phone, fax, Internet, email, SMS) to facilitate the filing of such updates.

It is the responsibility of each Anti-Doping Organization with Testing Authority over the Athlete to ensure that it checks for any updates filed by the Athlete prior to attempting to collect a Sample from the Athlete based on his/her Whereabouts Filing. For the avoidance of doubt, however, an Athlete who updates his/her 60-minute time slot for a particular day prior to the original 60-minute slot must still submit to Testing during the original 60-minute time slot, if he/she is located for Testing during that time slot.]

18. Article 1.3.2 of the ISTI obliges an athlete to provide a specific 60-minute time slot between 05:00 and 23:00 where the athlete will be available for Testing at a specific location and specifies that a failure to be accessible for Testing at the location during the specified 60-minute time slot will be a Missed Test:

1.3.2 Subject to Article 1.3.3, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for Testing at a specific location.

[Comment to 1.3.2: The Athlete can choose which 60-minute time slot between 5 a.m. and 11 p.m. to use for this purpose, provided that during the time slot in question he/she is somewhere accessible by the DCO. It could be the Athlete's place of residence, training or Competition, or it could be another

location (e.g., work or school). An Athlete is entitled to specify a 60- minute time slot during which he/she will be at a hotel, apartment building, gated community or other location where access to the Athlete is obtained via a front desk, or doorman, or security guard. In addition, an Athlete may specify a time slot when he/she is taking part in a Team Activity. In either case, however, any failure to be accessible and available for Testing at the specified location during the specified time slot will be a Missed Test.]

19. Article I.4.1 of the ISTI provides:

I.4.1 While Code Article 5.2 specifies that every Athlete must submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing jurisdiction over him/her, in addition an Athlete in a Registered Testing Pool must specifically be present and available for Testing on any given day during the 60-minute time slot specified for that day in his/her Whereabouts Filing, at the location that the Athlete has specified for that time slot in such filing. A Failure to Comply with this requirement shall be pursued as an apparent Missed Test. [...]

20. A Missed Test is defined in the ISTI and reflected in the 2019 World Athletics Regulations, as follows:

“Missed Test: a failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in their Whereabouts Filing for the day in question, in accordance with these Anti-Doping Regulations.”

21. A Missed Test shall only be confirmed against an athlete if the following requirements set out in Article I.4.3 of the ISTI are satisfied:

I.4.3 An Athlete may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:

a) that when the Athlete was given notice that he/she had been designated for inclusion in a Registered Testing Pool, he/she was advised that he/she would be liable for a Missed Test if he/she was unavailable for Testing during the 60-minute time slot specified in his/her Whereabouts Filing at the location specified for that time slot;

b) that a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot;

[I.4.3 (b) Comment: If the Athlete is not available for Testing at the beginning of the 60-minute time slot, but becomes available for Testing later on in the 60-minute time slot, the DCO should collect the Sample and should not process the attempt as an unsuccessful attempt to test, but should include full details of the delay in availability of the Athlete in the mission report. Any pattern of behaviour of this type should be investigated as a possible anti-doping rule violation of evading Sample collection under Code Article 2.3 or Code Article 2.5. It may also prompt Target Testing of the Athlete.

If an Athlete is not available for Testing during his/her specified 60-minute time slot at the location specified for that time slot for that day, he/she will be liable for a Missed Test even if he/she is located later that day and a Sample is successfully collected from him/her.]

c) that during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;

[Comment to I.4.3(c): Once the DCO has arrived at the location specified for the 60-minute time slot, if the Athlete cannot be located immediately then the DCO should remain at that location for whatever time is left of the 60-minute time slot and during that remaining time he/she should do what is reasonable in the circumstances to try to locate the Athlete. See WADA's Guidelines for Implementing an Effective Testing Program for guidance in determining what is reasonable in such circumstances.

Where an Athlete has not been located despite the DCO's reasonable efforts, and there are only five minutes left within the 60-minute time slot, then as a last resort the DCO may (but does not have to) telephone the Athlete (assuming he/she has provided his/her telephone number in his/her Whereabouts Filing) to see if he/she is at the specified location. If the

Athlete answers the DCO's call and is available at (or in the immediate vicinity of) the location for immediate testing (i.e., within the 60 minute time slot), then the DCO should wait for the Athlete and should collect the Sample from him/her as normal. However, the DCO should also make a careful note of all the circumstances, so that it can be decided if any further investigation should be conducted. In particular, the DCO should make a note of any facts suggesting that there could have

been tampering or manipulation of the Athlete's urine or blood in the time that elapsed between the phone call and the Sample collection. If the Athlete answers the DCO's call and is not at the specified location or in the immediate vicinity, and so cannot make himself/herself available for testing within the 60-minute time slot, the DCO should file an Unsuccessful Attempt Report.

Because the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defence to the assertion of a Missed Test.]

d) that Article I.4.2 does not apply or (if it applies) was complied with; and

e) that the Athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles I.4.3(a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to his/her failure (i) to be available for Testing at such location during such time slot and (ii) to update his/her most recent Whereabouts Filing to give notice of a different location where he/she would instead be available for Testing during a specified 60-minute time slot on the relevant day.

22. In relation to Article I.4.3(c) of the ISTI, the WADA ISTI Guidelines for Implementing an Effective Testing Programme (Version 1.0 October 2014) (the "WADA Guidelines") provide non-mandatory guidance on what constitutes a reasonable attempt by a DCO:

"9.2.1 Making a Reasonable Testing Attempt

An unsuccessful attempt to test an Athlete will not amount to a Missed Test unless the ADO on whose behalf the test was attempted can demonstrate to the comfortable satisfaction of the hearing panel that (among other things) the DCO made a reasonable attempt to locate the Athlete for Testing during the 60-minute timeslot specified for the day in question in the Athlete's Whereabouts Filing.

What constitutes a reasonable attempt to locate an Athlete for Testing during the 60-minute timeslot cannot be fixed in advance, as it will necessarily depend on the particular circumstances of the case in question, and in particular on the nature of the location chosen by the Athlete for that timeslot.

The only truly universal guideline is that the DCO should use his/her common sense. He/She should ask him/herself: “Given the nature of the location specified by the Athlete, what do I need to do to ensure that if the Athlete is present, he/she will know that a DCO is here to collect a Sample from him/her?”

In this context, the DCO should bear in mind the requirement to avoid insofar as possible giving the Athlete advance notice of Testing that might provide an opportunity for Tampering or evasion or other improper conduct.

[...]

The DCO does not necessarily have to be present at the location specified for the 60-minute timeslot from the beginning of the sixty minutes specified in order for the attempt to be reasonable. However, once he/she arrives at the location the DCO should remain at that location for whatever time is left of the 60-minute timeslot, and the DCO should ensure that he/she allows sufficient time to make a reasonable attempt to locate the Athlete during that remaining time.

For example, if the location specified is a sports center, and the Athlete has said he/she will be in either the gym or the pool or the changing room, then the Athlete may need to check each of those possible places, and so it is likely that more time will be required to make a proper attempt than if the location specified is the Athlete’s house.

[Comment: The DCO should stay at the specified location for the remainder of the 60-minute timeslot even if he/she receives apparently reliable information that the Athlete will not be at the location during the 60-minute timeslot (e.g. because he/she is out of the country). This is to avoid any subsequent argument that the information received was in fact wrong and the Athlete turned up at the location after the DCO had left.]

If the specified location is the Athlete’s house or other place of residence, the DCO should ring any entry bell and knock on the door as soon as he/she arrives. If the Athlete does not answer, the DCO may telephone the Athlete to advise him/her of the attempt in the closing five minutes of the 60-minute period. Such a call is not mandatory however, nor should it be used to invite the Athlete for Testing, but rather to potentially further validate that the Athlete is not present. [...]

The 26 April 2019 Alleged Filing Failure

23. On 26 April 2019, the Athlete's Whereabouts information indicated that he would be training at specified premises in Lexington, Kentucky between 2:00pm and 5:30pm and that his 60-minute time slot for that date was 7:30pm to 8:30pm at a given address (the Athlete's residence) in Lexington, Kentucky, USA.
24. The DCO, authorised by USADA, attended the Athlete's residence at 12:09 pm and called the Athlete, who said he was at the Drake relays in Iowa and asked whether he could be tested there. He was told it was not possible.
25. Testing attempts may be made outside the 60-minute window however in such circumstances if the Athlete is not present the Filing Failure provisions are applicable (rather than the Missed Tests regime).
26. On the same day, 26 April 2019, the Athlete made updates to his Whereabouts information between 10:13am and 10:14am MST (respectively between 12:13pm and 12:14pm in Lexington) and a further update at 11:38pm MST (01:38am on 27 April 2019 in Lexington). The updates at 10:13am and 10:14am MST were made approximately three to four minutes after the DCO called him:
 - a. At 10:13:52am MST (11:13:52am in Iowa and 12:13.52pm in Lexington), his 60-minute time slot for that same day, 26 April 2019, was changed retrospectively from 7:30pm to 8:30pm in Lexington to 9:00am to 10:00am in Iowa at "Drake relays: 1800 50th St., West Des Moines, Iowa."
 - b. At 10:13:52am MST (11:13:52am in Iowa and 12:13:52pm in Lexington), his overnight location for 26 April 2019 was changed to "Drake relays: 1800 50th St., West Des Moines, Iowa."
 - c. At 10:14:06am MST (11:14:06am in Iowa and 12:14:06pm in Lexington), he added 27 April 2019 as a travel day with the notation, "Back to Lexington."
 - d. At 11:38:24pm MST on 26 April 2019 (i.e., 02:38am in Iowa and 01:38am in Lexington on 27 April 2019), he changed his 60-minute time slot for 27 April 2019 to 10:30am to 11:30am at the "Drake Relays: 1800 50th St., West Des Moines, Iowa".

27. On 13 May 2019, USADA received the Athlete's explanation through his legal representative at that time, Mr Emanuel Hudson. Mr Hudson stated that the DCO attempted to test the Athlete out of his 60-minute time slot and that the Athlete had updated his Whereabouts information prior to the indicated training time (2:00pm-5:30pm) and 60-minute time slot (7:30pm-8:30pm) for 26 April 2020. Mr Hudson also stated that the Athlete had asked to be tested in Iowa or upon return to his residence address in Lexington the following day.
28. On 31 May 2019, USADA confirmed a Filing Failure against the Athlete.
29. The Athlete requested an Administrative Review of the decision to treat this as a Filing Failure. The Review was rejected on 3 July 2019. USADA therefore recorded a Filing Failure effective 1 April 2019 and advised the Athlete that he had two confirmed Whereabouts Failures declared by USADA.
30. The facts relating to this Filing Failure are not in issue. The Athlete knew he was going to Iowa on 22 or 23 April and received his itinerary on 23 April. He flew there on 24 April. From this it is apparent:
- a. The Athlete did not update his Whereabouts information as soon as possible after the circumstances changed, namely when he knew he was going to Iowa.
 - b. The Athlete did not update his Whereabouts information until after the DCO had attended at his residence in Lexington to test him. Until then, notwithstanding that he had been in Iowa since 24 April, his Whereabouts information still showed him in Lexington.
 - c. He then updated his information, but for 26 April changed his ADAMS entry to a time which had already occurred on 26 April, thus an invalid change.
31. It was argued on behalf of the Athlete that he changed his Whereabouts information prior to the 60-minute period on 26 April and thus there was no Filing Failure.

32. We want to emphasize that the obligation to update the Whereabouts information “as soon as possible after the circumstances change, and in any event prior to the 60-minute time slot” (Art. I.3.5. ISTI), requires a fast and timely update by any athlete as soon as there is a change in circumstances, and by no means does it mean that an athlete meets the requirement if he only updates his Whereabouts before his 60-minute timeslot. Rather, if the change in circumstances occurs after the commencement of the 60-minute timeslot, the update will not be considered timely even if made as soon as possible. Thus, any update of Whereabouts information must be made as soon as possible (after the circumstances change) and before the start of the 60-minute timeslot.

33. However, the Athlete only updated his whereabouts after he received the call from the DCO and that was two days after he had arrived in Iowa, and about three days after he was informed that the circumstances will change. This is a clear breach of Art. I.3.5. ISTI. Further, the Athlete’s updated Whereabouts information for 26 April specified a time which had already passed, so that in the end no valid 60-minute slot remained for that day at all. Therefore, we are satisfied the Athlete committed a Filing Failure on 26 April 2019.

The 9 December 2019 Alleged Missed Test

34. On 9 December 2019, a Doping Control Officer (DCO) was authorised by World Athletics to attempt an Out-of-Competition test on the Athlete. The Athlete’s Whereabouts information stated that he would be available at his Lexington residence in Kentucky, United States between 7:15pm and 8:15pm on that day. No other regular activity was recorded in ADAMS for the Athlete for the whole month of December (save for the first three days).

35. There was a dispute as to what had occurred on 9 December 2019.

36. We heard evidence from Mr Brian George and Ms Erin Freese, who were the DCO and Blood Collection Assistant (“BCA”). They attended the Athlete’s premises, obtained access to the Athlete’s residence by foot, although it was inside a gated community, and were in front of the Athlete’s apartment no later than 7:15pm. Mr George rang the bell and knocked loudly on the door repeatedly (every 10 minutes), but there was no response. Their evidence was that they

remained until 8:15pm directly in front of the house, close to the front door as well as the garage door. Mr George took a photo of the name plate at the entrance of the residence complex from his car at 8:21pm to confirm the time.

37. The Athlete's evidence was that he was out (Christmas) shopping. Though, he stated that he arrived home shortly before the end of the one-hour period, because he recalled watching the kick-off of the Monday night football game, which started at 8:15pm. His case was that the DCO must have left slightly before the end of the 60-minute timeslot and he must have just missed him.

38. Shopping receipts show that the Athlete was shopping at least from 7:13pm, also purchased a chipotle at 7:53pm and finally purchased 16 items from a Walmart Supercenter at 8:22pm. The Athlete's evidence was that he returned home briefly sometime between 8:00pm and 8:10 pm, ate his chipotle while watching the kick-off, then went out again.

39. We do not accept the Athlete's evidence:

a. The DCO and BCA (collectively, the "DCOs") both gave clear evidence that they were present throughout the period between 7:15pm and 8:15pm, standing directly in front of the Athlete's apartment. They stated that they would undoubtedly have noticed if the Athlete had driven up and entered the apartment, whether through the front or garage door. That evidence was corroborated by the 8:21pm photo. The DCO, who was assisted by a Blood Collection Assistant, was unable to locate the Athlete for testing on 9 December 2019 during the Athlete's 60-minute timeslot at the given address. We accept that evidence.

b. The Athlete purchased 16 items from the Walmart Supercenter at 8:22pm, therefore only seven minutes after the end of his 1-hour slot and the kick-off of the football match that he claims to have watched. Although the Walmart Center is relatively close to the Athlete's residence, it would have been simply impossible for him to purchase a chipotle at 7:53pm (the store being 5-9 minutes to his residence), drive home, park the car, go into his residence, eat the chipotle, then watch the kick-off of the football game which

only started at 8:15pm, and thereafter go out again in his car, drive to the store and pick up 16 items at the Walmart Supercenter so as to be able to pay for them by 8:22pm. And this notwithstanding the fact that, according to his version, the Athlete at least when he arrived before 8:15pm should have directly passed and seen the two DCOs, who also did not discover him and stated that at no time was a light turned on in the house - on a dark December evening.

40. It is obvious that in fact the Athlete did not go home until after making his 8:22pm purchase. We are comfortably satisfied that this is what happened.
41. The Athlete's case was that he was in any event within a 5-minute drive of his residence. If, therefore, (he claimed) he had been telephoned by the DCO, he could have been at his residence within the 60-minute window. Not only was there no such call made, but the DCO's report stated that no call was made "as per your [AIU's] instructions."
42. We heard evidence from Mr Raphaël Roux, who is the Out-of-Competition Manager for the AIU. He told us he gave this "no call" instruction for three reasons (i) the Athlete had in the relatively recent past missed four tests, and missed tests were always a warning sign in relation to an athlete (ii) in the past there had been a combination of very good performances by the Athlete and missed tests, and (iii) he had an impression that the Athlete might have been forewarned on previous tests.
43. We are not concerned with the merits of these reasons, rather, we recognize such considerations as legitimate and appropriate within the scope of a rule-compliant and effective concept of unannounced doping tests. We simply set them out because they were the reasons for the instruction he gave.
44. The Athlete's submission misunderstands the purpose of the permitted phone call within the last five minutes of 60 minute the testing window. We repeat I.4.3:

"Because the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is

not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defence to the assertion of a Missed Test.”

45. Moreover, the rule makes clear that the purpose is to prevent the possibility that the athlete is present at the premises but for some reason has not heard the DCO:

“[Comment to I.4.3(c): [...]] Where an Athlete has not been located despite the DCO’s reasonable efforts, and there are only five minutes left within the 60-minute time slot, then as a last resort the DCO may (but does not have to) telephone the Athlete (assuming he/she has provided his/her telephone number in his/her Whereabouts Filing to see if he/she is at the specified location.

46. What we would emphasise is that the purpose of the telephone call is *not*, and can never be, to invite the athlete to come for testing. It is important that this is made clear to athletes.

47. This is also completely consistent with the athlete’s obligation under Article I.4. ISTI to be present and available for testing at the specified location for the entire 60-minute window, without the DCO requiring any other means such as telephone calls, to contact the athlete. Accordingly, as is known in practice, some Sample Collection Authorities never permit phone calls at all during the 60-minute window. We emphasise it is the sole responsibility of any athlete to be available and to make him- or herself available to the DCO for testing during the 60-minute timeslot without restriction.

48. Thus, we consider there was nothing untoward about the instruction for “no call”, the AIU as the responsible Sample Collection Authority had the respective authority, and we do not regard this as providing any defence.

49. We therefore find there was a Missed Test on 9 December 2019.

50. It follows that, in light of the two Missed Tests and the Filing Failure within the period from 16 January 2019 to 9 December 2019, thus within 11 months, we are comfortably satisfied that an Anti-Doping Violation under Rule 2.4 of the World Athletics Rules has occurred.

Sanction

51. By Rule 10.3.2 of the World Athletics Rules:

“For an Anti-Doping Rule Violation under Rule 2.4 that is the Athlete’s first anti-doping offence, the period of Ineligibility imposed shall be two years, subject to a reduction down to a minimum of one year, depending on the Athlete’s degree of Fault. The flexibility between two years and one year of Ineligibility in this Rule is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.”

52. The World Athletics Rules define Fault as:

“any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person’s degree of Fault include, for example, the Athlete’s or other Person’s experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behaviour. [...]”

53. The AIU do not suggest that the second part of Rule 10.3.2 applies in the present case. So we have a discretion to reduce the sanction from two years down to a minimum of one year. But it is difficult to see what mitigation can be relied upon.

54. On 12 August 2019, the Athlete was charged by USADA with a violation of Article 2.4 of the World Anti-Doping Code for committing three Whereabouts Failures in the twelve-month period beginning 6 June 2018, namely a Filing Failure in respect of a test attempt on 6 June 2018, the Missed Test on 16 January 2019 and the Filing Failure in connection with the test attempt on 26 April 2019. On 2 September 2019, USADA withdrew the Charge on the basis that Filing Failures (pursuant to the Comment to Article I.1.3 of the ISTI) are deemed to have occurred not on the date of the failed test attempt (or on the date upon which the whereabouts information should have been updated) but rather on the first date of the relevant three-month whereabouts period. This meant that both the 6 June 2018 and 26 April 2019 Filing Failures were deemed to have occurred on 1 April of the respective year with the effect that the Second Filing Failure on 1 April 2019 (the Athlete’s third Whereabouts Failure) was one day outside of

the twelve-month period commencing on 1 April 2018. We note, that if this test attempt on 26 April 2019 would have been set during his 1-hour slot, the Athlete would have faced a missed test which would have been recorded on the same day, thus within the relevant 12-month period. However, as the test attempt was made outside his timeslot and backdated therefore, the Athlete was eligible to start at the 2019 World Championships in Doha, where he won gold in the 100m race.

55. Of course, the fact that the athlete had a narrow escape in relation to USADA is not a reason for lengthening the ban in the present case. But in considering the question of Fault, it is material to look at all the circumstances of the case.

56. The Athlete said in evidence that this incident had given rise to much hostile comment on social media which had caused him great distress. Whilst we can sympathise with this, the fact is that he had had the narrowest possible escape from a potential ban on this prior occasion. It might be thought that he would have learned from this experience to take much greater care in future in relation to his filing and whereabouts information.

57. In fact, that is not at all what happened. Despite the narrow escape from a potential ban and despite the fact that the Athlete knew that he still had two Whereabouts Failures on his record, and – as he accepted in the hearing - was on high alert, by 9 December, the Athlete went shopping throughout his 60-minute slot. As he himself stated, he was simply assuming that the DCO would call him and that he would then be able to drive back to his residence within a few minutes to provide a sample. However, the Athlete was fully aware, as he admitted at the hearing, that he is required to be present and available for testing at the specified location throughout his complete 60-minute window.

58. As for the April 2019 Filing Failure, the Athlete was also aware that he had two Whereabouts Failures at the time, and although he was informed about his new itinerary on 23 April, he only updated his Whereabouts information on 26 April when he was phoned by the DCO. Until then his Whereabouts information were still showing him in Lexington notwithstanding that he had been in Iowa since 24 April. Furthermore, he then set his 60-minute slot for 26 April for a time that had already passed.

59. The consequences for athletes who are subject to three missed tests are draconian. But, rather than learn from his experience with USADA, the Athlete's attitude to his obligations can fairly be described as entirely careless, perhaps even reckless.
60. Then, rather than admit his fault, he filed responses which strongly criticised the authorities for their conduct, submitting through his counsel in highly tendentious terms that the authorities developed a strategy in an effort to catch him out, denied the offence, and persisted in an exculpatory version of events as to what happened on 9 December 2019 that was simply untrue.
61. For the avoidance of doubt, we find that the criticisms he has made of the AIU and their conduct are without foundation. Whilst these matters do not go to the sanction, it is important for us to emphasize there was no basis whatsoever for the Athlete's criticisms of the AIU's conduct.
62. We understand that it is very difficult for a young man, blessed with the prodigious talent which the Athlete obviously has, to find himself suddenly at the centre of the public gaze. But success of this nature, and the financial rewards that follow, also give rise to responsibilities that must be taken seriously and observed, day after day, just as all other athletes in the Registered Testing Pool must do too.
63. The Athlete's counsel further suggested that the testing regime recognises that athletes make mistakes, and pointed out that, because of the Athlete's great success, he has been tested many times. So it is not three missed tests out of three but three out of a large number. The problem with that argument is that the more the Athlete is tested, and knows he is going to be tested, the more familiar he becomes with the regime and the need to regulate his conduct to comply with the requirements of the regime. The evidence indicates a complete failure to do so by the Athlete. In addition, such an argumentation would expose those athletes who are tested more often, and are therefore often particularly successful in their sport, to less stringent requirements than less frequently tested athletes – such an approach is simply not justifiable either with the Rules or with the general idea of fairness.

64. It was also submitted that, even if this does not amount to a defence, on previous occasions the Athlete had been phoned by the DCO during the 5-minute period and his expectation that this would happen provides mitigation. However, the fact is that, as we have found, the Athlete was absent from his residence for the *entirety* of the 60-minute window. The purpose of the phone call, even when permitted, is not to invite the Athlete to come for testing. It is to ensure that no mischance occurs where the Athlete has not heard the DCO when he knocks or rings.
65. We regret to say that we do not think there is any mitigation which can fairly be relied upon to reduce the sanction from the two-year period. Unfortunately, we see this case as involving behaviour by the Athlete as very careless at best and reckless at worst. In those circumstances we impose a two-year sanction.
66. We do not propose to make an order for costs.
67. We take into account the Athlete's Provisional Suspension which commenced on 14 May 2020.
68. The AIU submitted that there should be a disqualification of the Athlete's results from the date of the Missed Test on 9 December 2019. Rule 10.8 provides that there shall be a Disqualification from the date of the Anti-Doping Rule Violation unless the Tribunal determines that fairness requires otherwise. We reject this. This is very different from a case where the Athlete commits an ADRV through ingesting a Prohibited Substance, where results after the date of the ADRV may be affected. In a case where we have imposed a maximum sanction after missed tests, in our view there is no justification for penalising the Athlete for Disqualification beyond the period of sanction and we consider fairness does require otherwise.

Disposition

69. We find that the Athlete has committed an ADRV under Rule 2.4 of the World Athletics Rules.

70. We impose on the Athlete a period of Ineligibility of two years, which will end on 13 May 2022.

71. We make no order for costs.

72. This decision may be appealed to CAS pursuant to Article 13. The deadline for filing an appeal to CAS is 30 days from the date of receipt of the decision by the appealing party (Art 13.7.1 World Athletics Rules), save for WADA, for whom the provisions of Art. 13.7.2 apply.



Charles Hollander QC (Chair)

On behalf of the Panel

London

22 October 2020

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