

DECISION OF THE ANTI-DOPING PANEL

In the Matter of the Anti-Doping Violation of Oscar Alfonso Guillén Ticas (El Salvador)

Panel Members: Mr. John A. Faylor, Attorney-at-Law, Frankfurt am Main, Germany (Chairman)

Professor Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

Dr. Lucienne Attard, Doctor of Medicine and Surgery, Chairperson of the Anti-Doping Commission (NADO) of Malta

Archer: Mr. Guillén Ticas, represented by his legal counsel, Dr. Oscar Antonio Giralt Avala in San Salvador, El Salvador

World Archery Federation: represented by its Secretary General, Mr. Tom Dielen, and its Anti-Doping Administrator, Mr. Pedro Goncalves

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Hearing Date: 9 May 2016

Time: 15.00 CET to 17:15 CET

Place: The Panel Members, Mr. Faylor and Prof. Fumigalli, the Anti-Doping Administrator, Mr. Pedro Goncalves and the General Secretary of World Archery, Mr. Tom Dielen, attended the hearing per teleconference from the Headquarters of the World Archery Federation, Maison du Sport International, Lausanne, Switzerland.

Dr. Attard attended the hearing per video- and teleconference from her office in Malta.

Mr. Giralt, Mr. Guillén Ticas, the translator Ms. Norma, attended the hearing by video- and teleconference from San Salvador, El Salvador.

The Archer's witnesses provided testimony by video- and teleconference from San Salvador, El Salvador.

I. THE PARTIES

1. Mr. Guillén Ticas ("**Archer**" or "**Mr. Guillén Ticas**") is an El Salvadorian archer and member of the Salvadorian Archery Federation, having begun his sporting career already in 2000 at the age of 13. He became a member of the national team in 2003 and since then has competed in over 50 international competitions.
2. The Salvadorian Archery Federation ("**Federacion Salvadorena**") is the national governing body for the sport of archery in El Salvador of which the Archer is a member.
3. World Archery Federation ("**WA**") is the international federation responsible for the sport of Archery worldwide. Federacion Salvadorena is a member association of WA.

II. FACTUAL BACKGROUND

4. On 9 May 2016, the WADA-accredited laboratory in Montreal, Canada, notified WA of an Adverse Analytical Finding ("**AAF**") on a urine sample collected from the Archer on 13 March 2016 while competing in the Guatemala World Ranking Event.
5. The laboratory analysis revealed the presence of clostebol (chlortestosterone metabolites) which is classified in the 2016 Prohibited List as a S1.1A exogenous anabolic androgenic steroid (exogenous AAS). The term "exogenous" refers to a substance which is not ordinarily produced by the body naturally.
6. In his Doping Control Form, the Archer listed no prescription, non-prescription medications or supplements which he was taking at that time.
7. The Archer and the Federacion Salvadorena were notified of the AAF on 12 May 2016. The Archer was also informed in the notification that he was provisionally suspended from the date he received the notification until the anti-doping procedure has been completed.
8. The Archer was also informed of the potential consequences of the violation, namely automatic disqualification, including forfeiture of any medals, points and prizes pursuant to the WA Anti-

Doping Rules (the “**Rules**”) and the possibility that he could be sanctioned with ineligibility under Art. 36.10.2 of the Rules.

9. The Archer raised no request for the opening and analysis of the B-Sample. The B-Sample was therefore not analyzed.

III. PROCEDURE

10. On 16 May 2016 and after receipt of the Documentation Package for the A-Sample analysis, the Archer requested that an expedited hearing take place in light of upcoming qualification competitions prior to the Olympic Games in Rio. Specifically, he inquired whether a hearing by video- or teleconference would be possible.
11. On 30 May 2016, the Archer and the Administrator were provided a “Provisional Timetable to Hearing” in which deadlines for the submission of statements/explanations, the presentation and acceptance of the Order of Procedure and the date of the hearing on 9 June 2016 were agreed upon. The Archer was also expressly informed of his right to a fair hearing pursuant to Art. 36.8.1.3 through Art. 36.8.1.5 of the Rules
12. On 2 June 2016, the WA Anti-Doping Administrator (the “**Administrator**”) submitted his statement, pointing out that on the basis of his initial review, no applicable Therapeutic Use Exemption (TUE) had been and was not in the process of being granted to the Archer at that time. He further stated that no apparent departure from the International Standard for Testing and Investigations or Laboratory had been identified.
13. On 3 June 2016, the Archer, represented by his legal counsel, submitted his explanatory brief followed on the following day by five (5) appendices in translation which he designated as “Evidentiary Documentation.”
14. The Order of Procedure signed by the Archer was returned to the General Secretary on 7 June 2016.
15. On 9 June 2016, a hearing was held by teleconference in the configuration described in the preamble to this decision. Video-conferencing was not possible due to technical problems.

IV. SUBMISSIONS OF THE PARTIES

A. Submissions of the Archer

16. The Archer submitted that he was playing a soccer game on a concrete court with friends on 21 February 2016 when he suddenly slipped and considerably injured his left knee.

17. For the past three years, the Archer had received physiotherapy from a career physiotherapist, Karen Beatriz Doñan de Alfaro, a medical professional for public health with her practice located in the national stadium in El Salvador. Due to other commitments, he moved his weekly appointment for his usual physiotherapy from Friday to Monday, 22 February. When he arrived, he still bore an open wound from the soccer game the day before.
18. Upon entering the practice of his physiotherapist, he encountered Elba Elizabeth Alfaro Salazar, also a licensed career physiotherapist, whose clinic is immediately next to the clinic of his physiotherapist. Both physiotherapists inquired about his wound. Elba Elizabeth Alfaro Salazar suggested that he apply a medication by the name of “Neobol” to the wound, which she claimed was in common use and could be purchased anywhere without a prescription. It was used, she assured him, specifically to heal wounds.
19. The Archer asserts that he asked Elba Elizabeth Alfaro Salazar if the medication contained any prohibited substances that could affect his sporting career to which she replied that “he would have no problems using it, as this is a commonly used medication, that it has no restrictions whenever you need to purchase it in any drugstore and that the National Athletics Federation uses it regularly for the treatment of wounds in their athletes.”
20. After that, he applied the medication on 22 and 23 February, two applications per day, one in the morning and one at night. As of 23 February, he started to notice an improvement and stopped using the medication.
21. On 6 March 2016, he competed in the World Ranking Cup in Guatemala and finished second in the individual Olympic round. On Sunday, 13 March, he submitted to an anti-doping test, the same test to which he had submitted in the past.
22. On 12 May 2016 he was notified that the anti-doping test performed during the Guatemala competition proved positive for Clostebol. He has never tested positive for any Prohibited Substance¹ during his sporting career.
23. The Archer submits that he acted unintentionally, having relied on the advice of his physiotherapist. The violation of the Rules took place because

“... he was guaranteed by a career physiotherapist and occupational therapist, authorized by the oversight board of the medical profession of the superior council for public health in El Salvador that works for the National Athletics Federation, on INDES premises [the National Stadium for the National Institute for Sports] that the use of the medication Neobol had NO RISK that could constitute or result in a violation of the world anti-doping code.”

¹ Capitalized terms in this decision shall have the same meaning as the capitalized terms in the World Archery Anti-Doping Rules in the version

24. Together with his Explanatory Statement, the Archer submitted witness statements sworn before a San Salvador notary from the physiotherapists Karen Beatriz Doñan de Alfaro, Elba Elizabeth Alfaro Salazar, the medical opinion of Dr. Francisco Gamero and the psychological opinion of the psychologist Boris Barraza.
25. The Archer requests that the Panel find that Mr. Guillén Ticas be absolved of the AAF in the hearing by holding “that there was no willful misconduct, negligence or fault” in his actions.
- B. Submission of the Anti-Doping Administrator
26. In his original “Submission prior to Hearing” dated 2 June 2016, the Administrator requested a four (4) year period of ineligibility, in addition to disqualification and the forfeiture of all results obtained in the competition and the withholding of all sport-related financial support or other benefits received by the Archer from WA and its National Federations, with the period of provisional suspension, which started on 12 May 2015, being credited against the total period of ineligibility.
27. However, the Administrator placed this request under the reservation that it is made in the absence of explanations from the Archer. The Administrator stated that he might reconsider his opinion based on explanations given in the written submission presented by the Archer and or given at the hearing.
28. Following receipt and review of the Archer’s Explanatory Statement of 2 June 2016, the Administrator amended his request in a “Second Written Submission prior to Hearing” dated 8 June 2016 as follows:
 - 28.1 The Administrator recognized that the Archer admitted the violation, confirming that the AAF was due to the usage of a product called Neobol, a cream containing clostebol, to heal a knee wound.
 - 28.2. The Administrator also accepted that the Archer consulted a physiotherapist Elba Elizabeth Alfaro Salazar and that she recommended the use of the cream. Upon inquiry whether the cream contained any Prohibited Substance, he was told by the physiotherapist that Neobol was free of any such Prohibited Substances.
 - 28.3 The Administrator also noted that, to the best of his knowledge, there was no prior anti-doping rule violation recorded against Mr. Guillén.
29. The Administrator evaluated whether or not the Archer had established that the violation could be regarded as non-intentional and held that the Archer had met his burden of proof that the violation was indeed non-intentional. He continued in his submission:

“In fact, World Archery Anti-Doping Administrator believes that Athlete was truly not aware of the fact that the cream was containing forbidden substances. In addition the Athlete used

the product for medical reasons, to treat a medical condition and consequently did not intend to cheat. The Athlete trusted his physiotherapist and genuinely believed that the product suggested to him was safe."

30. The Administrator further noted that an elimination of the period of ineligibility where there is no fault or negligence cannot apply in the case at hand.

"The application of art. 36.10.4 is clearly excluded since the violation of the athlete is connected with the behavior of the Athlete's support personnel . . . Athletes are responsible for their choice of medical personnel and for advising medical personnel (like a physiotherapist) that they cannot be given any prohibited substance."

31. With regard to a reduction of the sanction for no significant fault or negligence pursuant to Art. 36.10.5.2 of the Rules, the Administrator held that this article "is potentially applicable in the present case." Based on Article 36.10.5.2 "if Athlete or other Person establishes that he or she bears No Significant Fault or Negligence, then, the otherwise [applicable] period of Ineligibility may be reduced." The Administrator continued:

"The Athlete used the product for medical reasons. The WORLD ARCHERY ANTI-DOPING ADMINISTRATOR believes that the Athlete was truly not aware of the forbidden status of the product because he relied on the physiotherapist's advice. WORLD ARCHERY ANTI-DOPING ADMINISTRATOR has also verified whether or not the concentration of the substance found in the urine was compatible with the application of the cream. The Montreal WADA accredited laboratory director Dr. Ayotte stated that the concentrations found in the sample given by the athlete could be compatible with the administration of the Neobol cream. However it appears that the concentration found is more compatible with an administration of the substance closer to sample collection than the one reported by the athlete."

32. The Administrator further noted in his opinion that the Archer, being always responsible for the use of the product, had failed to conduct the necessary further enquires on the ingredients of the products. He trusted the opinion of the physiotherapists but he did not verify their recommendation with his personal doctor or the pharmacist if the active ingredient was forbidden.
33. Based on this evaluation, the Administrator requested a fifteen (15) month period of ineligibility in accordance with Art. 36.10.2.1.1 and 36.10.5.2 of the Rules, disqualification of the results obtained at the competition in accordance with Art. 36.9 of the Rules, including forfeiture of all medals, points and prizes. In addition, he requested the withholding of all sport-related financial support or other sport related benefits received by the athlete from WA and its National Federations in accordance with Art. 36.10.12.4. of the Rules. The period of provisional suspension which began on 12 May 2016 was to be credited against the total period of ineligibility eventually determined by the Hearing Panel.

V. THE HEARING

34. The Parties had no objection to the constitution of the Panel. The Panel confirmed that the witnesses named by the Archer in his Explanatory Statement, with the exception of Karen Beatriz Doñan de Alfaro, were present.
35. The Administrator restated the content of his written statement of 8 June 2016, citing the reduction of the ineligibility sanction from four (4) years in the first statement to fifteen (15) months in his written statement of 8 June 2016.
36. In the Archer's opening statement, he submitted that the banned substance clostebol had been used as a medication for a knee injury. It was topical use to heal a laceration. Authorized physiotherapists, licensed by the public health authorities, recommended the use of this medication.
37. The Archer relied on the recommendation of professionals. The Archer asked these professionals whether the medication which was recommended contained any Prohibited Substances which would result in penalties for him in sport competition. The Archer acted responsibly in taking this advice. For this reason, Art. 36.10.4 of the Rules which permits elimination of the ineligibility sanction should apply in his case.
38. Moreover, the Archer does not feel that he acted with negligence in taking the advice of these professionals. He has worked hard in his career. Asked whether the medication Neobol, which allegedly contains the Prohibited Substance clostebol, is sold "over-the-counter" in El Salvador, the Archer answered "yes". In his country, "all of the people use this medicine."
39. When asked by the Panel whether it is true that the content of the medication "Neobol" is not stated on the packaging, the Archer confirmed that such a disclosure of the ingredients did not exist on the packaging. He looked in the internet to see whether Neobol was included on the list of Prohibited Substances.
40. The Archer alleged in his testimony that Neobol was not found on the list. He knows that Neobol is a commercial brand, but he learned of the content only after the problem arose. This is why he then – after the fact -- inquired with the National Director of Medicine in El Salvador, because he was worried about the content. He did not want this problem to arise for other athletes.
41. When asked how long Neobol has been sold in El Salvador, the Archer answered "at least ten years." When asked by the Panel whether no one during this period asked the manufacturer what the medication contained, the Archer responded that this is probably the first time that an issue such as this has arisen. This is the first time, although it is a commonly used medication.
42. The Panel established that the Neobol was applied in the form of a spray. When asked who furnished the spray to the Archer, counsel for the Archer responded that it was the physiotherapist

who applied the spray. The spray container was not given to the Archer. This was, at all times, in the possession of the professional.

43. The Panel confirmed that the ingredient clostebol is not stated on the packaging of the bottle. The Archer's counsel stated that the manufacturer of the spray is a company named "Unipharm" in Guatemala. In some presentations, all of the ingredients are listed on the bottle, but in other presentations they are not. They use various presentations for the same medication, because it is so well-known in the country. The medication is known by its name, not by its ingredients. Generally, pharmacists know the content.
44. When asked whether the Neobol was actually prescribed by a doctor or whether it was just friendly advice, the Archer responded that it was not prescribed by a doctor, it was rather a recommendation from the physiotherapists to use it. The Neobol spray was applied by the physiotherapist in their stadium practice.
45. Turning to the witnesses, the Archer stated that the Panel should refer to the written witness statement of Karen Beatriz Doñan de Alfaro who could not be present. Counsel for the Archer then named the first witness, Dr. Francisco Gamero, who testified as follows.
 - 45.1 Dr. Gamero stated that for the past two years he has been the appointed physician for the Olympic Committee in El Salvador. He works on a volunteer basis. He has known the Archer for several years and confirmed that he has been a good athlete during his career.
 - 45.2 He confirms that the Archer sustained a bruise with a cut in the skin while playing soccer. It was the physiotherapist who told him to use the medication Neobol to heal the wound. It is known that the medication contains an antibiotic. When he received the report from the physiotherapist, the Archer first knew that the medication contained the steroid clostebol. He had previously not been aware that the medication contained this substance. He also knew that this medication has a very long elimination time when used. The Archer did not use the substance to achieve an advantage in competition.
 - 45.3 Dr. Gamero confirmed that he knew for approximately five years that Neobol contained clostebol, but stated that the majority of the public knows it only as an antibiotic which heals bruises. In the case at hand, however, he was not asked about it by the Archer. In response to the Panel's question, Dr. Gamero responded that, if the Archer had called him to ask if he can use Neobol, he would have told him that "he couldn't use it." The Archer probably relied on the opinion of his physiotherapists and "did not think that he had to call me in order to use it." He thought that this was

“something not that big”, otherwise he will call me. He believed that he could use it without a problem.

45.4 Upon further questioning from the Panel, Dr. Gamero confirms that the packaging of Neobol varies in its disclosure of the content. In some, it is stated “in small letters” that Neobol contains 150 mg of clostebol. Everyone assumes that it contains an antibiotic. It is not a prescription medication. It is sold over-the-counter.”

46. The Archer then introduced the witness Elba Elizabeth Alfaro Salazar. Her testimony can be summarized as follows:

46.1 Ms. Alfaro Salazar has been a physiotherapist for the past 8 year. She confirmed that she recommended to the Archer that he use the medication Neobol to heal his wound. She also confirmed that Mr. Ticas asked her whether the medication contained any prohibited substances. She assumed, however, that it would not be harmful to him because it is an “over-the-counter” medicine.

46.2 Ms. Alfaro Salazar confirmed that she treats many athletes, most of them minors. She had no knowledge that Neobol contained clostebol. She uses Neobol for its antibiotic effect. When asked whether she ever checked in the internet or on the packaging what the medication contained, she confirmed that she checked only to see how to use the substance and for what purposes.

46.3. When asked for what purpose she uses Neobol in her practice, she explained that if she sees evidence of a bruise or contusion on the skin of the athlete, she recommends the use of Neobol.

47. The Archer then introduced the witness Boris O. Barraza, a psychologist for the Olympic Committee. His testimony can be summarized as follows:

47.1 Mr. Barraza has practiced his profession for more than 3 years. He knows the Archer since the beginning of this year. Mr. Barraza confirmed the personal honesty of the Archer. He would not consider the possibility of cheating to achieve his goals.

47.2 In response to a question from the Panel, Mr. Barraza confirmed that the Archer is not being treated by him for any specific psychological condition. It is merely his task to accompany the athlete during his pursuance of the sport. He is a “support psychologist”.

48. The Panel then proceeded to take the testimony of the Archer, Mr. Guillén Ticas:

48.1 The Archer stated that after 16 years of hard work, he had accomplished his dream to go to the Olympic Games. The Guatemala Tournament was not a big tournament and

he could not even win. He would never take unfair advantage in order to endanger his hard work.

48.2 Mr. Ticas explained the nature and scope of his anti-doping education in El Salvador. He has received instruction on anti-doping from his federation and from the Olympic Committee.

48.3 When asked why he did not call Dr. Gamero regarding the content of the substance Neobol, he responded that he considered this to be a minor matter and never considered that it was important to call Dr. Gamero. He confirmed that he has known the physiotherapist Alfaro Salazar for over three years.

48.4 Mr. Ticas confirmed that following the recommendation to use Neobol he asked several persons who were around at that time whether the medication was safe. He did not look into the internet; he was satisfied with the professional opinion of Ms. Alfaro Salazar. This was enough for him; she was a professional physiotherapist.

49. In making his closing statement, the Administrator maintained his request for sanctioning which he submitted in his Second Submission of 8 June 2016. He confirmed that he believes the Archer had no intention to cheat. But he also ruled out application of Art. 36.10.4 of the Rules, meaning the elimination of the ineligibility sanction on the grounds of No Fault or Negligence. He requested application of Art. 36.10.5 of the Rules, No Significant Fault or Negligence. He repeated his request for a fifteen (15) month period of ineligibility.
50. Counsel for the Archer then proceeded to make his closing statement. He pleaded for elimination of the ineligibility sanction. The reason for this request is the absence of guilt, fault or negligence on the part of the Archer. The Archer sought the advice of professionals in order to clarify whether the substance was safe or not. Being the responsible person, he asked his physiotherapist about the content.
51. Counsel for the Archer was asked whether he had any objection to the course of the hearing, whereupon counsel or the Archer answered "no".
52. The Archer, Mr. Ticas, was then given the last word.

VI. THE RELEVANT ANTI-DOPING RULES

54. The World Archery Rulebook in the currently governing version of 30 March 2016 incorporates in Book 6 the revised (2015) World Anti-Doping Code. These Rules are adopted and implemented in accordance with WA's responsibilities under the Code.

55. With regard to the instant proceedings, the following provisions of the Rules are relevant:

36.2 Anti-Doping Rule Violations

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated. Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:

36.2.1. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

- 36.2.1.1 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.
- 36.2.1.2. Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.
- 36.2.1.4 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping violation.

36.3 Proof of Doping

36.3.1 Burdens and Standards of Proof

WA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether WA has established anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than a proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

36.4. The Prohibited List

36.4.1. Incorporation of the Prohibited List

These Anti-Doping Rules incorporate the Prohibited List, which is published and revised by WADA as described in Article 4.1 of the Code.

36.9 Automatic Disqualification of Individual Results

An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.

36.10. Sanctions on Individuals

36.10.1. Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs.

An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1. Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.

36.10.2. Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method.

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4., 10.5 or 10.6.

36.10.2.1 The period of Ineligibility shall be four years where:

36.10.2.1.1. 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.

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

36.10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

36.10.2.3 As used in Articles 10.2 and 10.3, 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

36.10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence.

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

36.10.5. Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

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

36.10.5.1.1 Specified Substances

....

36.10.5.1.2. Contaminated Products

In cases where the Athlete or other Person can establish no Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

36.10.5.2 Application of No Significant Fault or Negligence beyond the Application of 10.5.1.

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period.

56. The 2016 Prohibited List, International Standard, maintained by WADA, is incorporated into the WA Anti-Doping Rules referred to in Art. 36.4.1 of the Rules. As an exogenous anabolic androgenic steroid listed under S1 Anabolic Agents of the 2016 Prohibited List, clostebol is a Prohibited Substance. For purposes of clarity, it is not a Specified Substance.

VII. JURISDICTION

57. The jurisdiction of the Panel rests on Art. 36.8.1.1. of the Rules. The Archer has expressly requested the holding of an expedited hearing which took place on 9 June 2016. In conjunction with the holding of the hearing, the Archer accepted the terms of the Order of Procedure.

VIII. THE MERITS

58. The Panel holds to its comfortable satisfaction that the AAF documented in the Documentation Package for the Archer's A-Sample, the B-Sample not having been opened and analyzed, contained the prohibited anabolic androgenic steroid clostebol. The Archer does not challenge the presence of clostebol in his A-Sample.
59. The Administrator has also raised no challenge or objection to the laboratory analysis procedure as set out in the Documentation Package.
60. Having established the fact of the anti-doping rule violation, the presence of clostebol in the Archer's body is deemed to have been committed pursuant to Art. 36.2.1 of the Rules without regard to the Archer's intent, fault, negligence or knowing use of the Prohibited Substance. This rule has been referred to in numerous CAS decisions and in scholarly literature as "strict liability" and is applicable to this case.
61. The presence or absence of intent, fault, negligence or knowing use of the Prohibited Substance has relevance only for the determination of whether the Archer may seek elimination of the period of ineligibility where there is No Fault or Negligence (Art. 36.10.4) or may seek the reduction of the period based on No Significant Fault or Negligence (Art. 36.10.5).
62. In either case, the burden is placed upon the Archer to prove "on the balance of probability" that he bears either No Fault or Negligence or No Significant Fault or Negligence (Art. 36.3.1).
63. After reviewing both the Administrator and the Archer's written submissions, after having heard the personal testimony of the Archer in the hearing, after consideration of the witness statements and the oral testimony of the witnesses given during the hearing, the Panel has concluded that Mr. Guillén Ticas acted without intent.

64. This conclusion rests on the testimony of Ms. Alfaro Salazar set out in marg. note 46.1 et seq. above in which she confirms that she recommended the use of the contaminated medication to the Archer to heal a laceration on the Archer's knee. She applied the medication Neobol approximately 18 days prior to the Guatemala World Ranking Event on 13 March 2016.
65. This testimony gains additional credibility on the findings of the Administrator who verified with the laboratory director of the Montreal laboratory, Dr. Ayotte, that the concentration of the substance found in the Archer's urine was compatible with the application of the "Neobol cream". This credibility is not lessened by the fact that both the Administrator and Dr. Ayotte wrongly assumed that a cream instead of the spray was applied to the wound or Dr. Ayotte's opinion that "the concentration found is more compatible with an administration of the substance closer to sample collection than the one reported by the athlete."
66. The Panel therefore holds that the Archer has established, on the balance of probability, that an open wound sustained while playing soccer on 21 February 2016 and the Neobol spray containing clostebol applied by his physiotherapist, Ms. Alfaro Salazar, on the two following days is the source of the clostebol found in his A-Sample.
67. For this reason, a four year period of ineligibility would be entirely disproportionate to the level of the Archer's fault in having committed the violation. An anabolic androgenic steroid such as clostebol is indeed a Prohibited Substance of serious character, the consumption of which merits a severe sanction. But the Panel is convinced that the Archer acted without intent in the case at hand.
68. The starting point for the determination of the ineligibility sanction is therefore two (2) years pursuant to Art. 36.10.2.2 of the Rules. Absent intent, this is not an offense in which Art. 36.10.2.1 applies. The Panel is therefore asked to consider whether Art. 36.10.5.1.2 or Art. 36.10.5.2 would permit a further reduction of the ineligibility sanction of two years.
69. If the Archer can establish that the Prohibited Substance detected came from a Contaminated Product within the meaning of the defined term in the WA Anti-Doping Rules, and if the Archer can establish No Significant Fault or Negligence, then Art. 36.10.5.1.2 prescribes that the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.
70. The WADA World Anti-Doping Code 2015 defines a "Contaminated Product" as follows:
"A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search."
71. The Panel has determined on the basis of its own Internet search that advertising and product information of the pharmaceutical manufacturer Unipharm for its medication Neobol® indeed states

openly that clostebol is, together with neomycin, “one of to active substances” contained in Neobol. Neobol is a registered trademark of Unipharm.

72. Having established the fact of open disclosure of the active substance clostebol in the product Neobol, the Panel finds that Neobol cannot be classified as a Contaminated Product within the meaning of Art. 36.10.5.1.2 of the Rules. The minimum sanction of a mere reprimand or no period of Ineligibility cannot be applied in the case at hand.
73. Alternatively, Art. 36.10.5.2 of the Rules permits a further reduction of the two year period set out in Art. 10.2.2, if the Archer can establish in an individual case which involves neither a Specified Substance nor a Contaminated Product (Article 10.5.1) that he or she bears No Significant Fault or Negligence. In this case, however, the otherwise applicable period of Ineligibility may indeed be reduced based on the Archer’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable, i.e. by not more than one year.
74. For purposes of clarity: while the Panel holds in the case at hand that the Archer acted unintentionally with regard to the presence of clostebol in his A-Sample, the Panel is not willing to go so far as to find that an Elimination of the sanction for No Fault or Negligence pursuant to Art. 36.10.4 is appropriate or justified.
75. To the contrary, the Archer indeed acted negligently in the case at hand in not having more diligently scrutinized the content of the Neobol applied by Ms. Alfaro Salazar to his open wound over the three day period beginning on 22 February 2016.
76. While the Panel is willing to accept that the manufacturer of Neobol may have omitted the disclosure of clostebol in various presentations or on the packaging of the medication, depending perhaps on the country in which the substance is sold, it is difficult for the Panel to believe that a medication that has been sold for more than 10 years on the El Salvadorean market would never have generated a doping issue or given rise to an awareness among sport-related medical personnel, including physiotherapist whose practices are located in sport stadiums and who treat primarily athletes, that the substance is unsafe and contains a Prohibited Substance. Dr. Gamero know for approximately 5 years that the substance was unsafe.
77. The Archer confirmed in his testimony that he regularly participated in the anti-doping educational programs sponsored by the Federacion and from the Olympic Committee. Presumably, the “learning modules” which he observed annually cautioned him regarding the promiscuous use and consumption of contaminated medications, nutritional supplements and foods.
78. For the Panel, it is difficult to understand why the Archer did not consult with Dr. Gamero, the authorized physician of the El Salvadorian Olympic Committee, to ask whether the medication Neobol was safe or unsafe. A telephone call to Federacion Salvadorena would perhaps also have

helped clarify the issue. If the Archer had looked into the Internet under the name “Neobol”, which apparently he did not, he would have immediately hit upon the ingredient “clostobel”. A cross-check with the 2016 WADA Prohibited List, also obtainable in the Internet, would have alerted him to the risk of use.

79. The Archer explains this lapse of caution with the statement that he considered this “to be a minor matter” which did not require the consultation of the medical officials of either the Federation or the Olympic Committee. Such a statement evidences clearly the negligence which surrounded the Archer’s reliance upon the advice of his physiotherapist. As a world-class athlete, he bears a heightened personal responsibility to be especially diligent in his use of medications, nutritional substances and foods, generally.

IX. SANCTIONS

80. Having established that the Archer acted with negligence, the Panel holds that a period of ineligibility which exceeds twelve (12) months would be disproportionate to the severity of the violation.
81. The Archer is not a cheater. The violation is not intentional. His negligence, which in this instance has been plainly demonstrated, is not of a level which entails significant culpability. He carelessly relied on the representations of his physiotherapist and others that the substance was safe and did not contain a Prohibited Substance. This view is shared by the Administrator.
82. Importantly, as a result of his twelve month sanction, the Archer is deprived of his opportunity to participate in the upcoming Olympic Games, a penalty which results in immense disappointment for any athlete who has diligently and conscientiously practiced his sport for more than 15 years without a doping violation and who considers Olympic participation to be the pinnacle of his sporting career.
83. Both the Administrator and Dr. Ayotte have confirmed that the concentration of clostebol found in his sample is compatible with the administration of the substance as a skin medication in the days prior to the competition.
84. In addition to the ineligibility sanction, the Panel has applied Art. 36.10 of the Rules which disqualify the Archer from all results achieved at the Guatemala World Ranking Event both as an individual and as a member of a team in which he participated.

X. COSTS

85. This decision is pronounced without costs to the Archer. He shall assume, however, whatever costs have been incurred in conjunction with his defense, in addition to the costs which he has incurred from attending the hearing on 9 May 2016 from San Salvador, El Salvador in addition to any costs incurred by his named witnesses.
86. Any costs of WA to be assumed by Federacion Salvadorena shall be calculated and communicated separately by the Secretary General of World Archery.

XI. ARCHER'S RIGHT TO APPEAL TO CAS

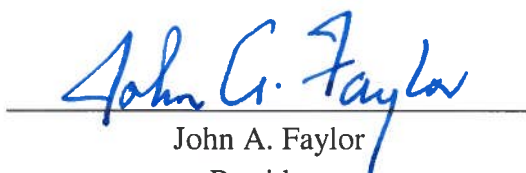
87. The decision of the Panel made under these Rules may be appealed exclusively to the Court of Arbitration for Sport (CAS) in Lausanne in accordance the Art. 36.13.2 et seq. of the Rules and in accordance with the provisions applicable before the CAS.
88. The time to file an appeal to CAS is twenty-one (21) days from the date of receipt of this reasoned decision by the appealing party.

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XII. THE DECISION OF THE PANEL

1. Mr. Guillén Ticas has committed an anti-doping rule violation pursuant to Art. 36.2.1 of the Anti-Doping Rules of the World Archery Federation.
2. Mr. Guillén Ticas is sanctioned with a period of ineligibility of one (1) year pursuant to Art. 36.10.2 of the Anti-Doping Rules of the World Archery Federation, commencing as of the date of the provisional suspension on 12 May 2016.
3. All competitive results achieved at the Guatemala World Ranking Event between 8 March 2016 and 13 March 2016, in particular, all medals, points and prizes obtained by Mr. Guillén Ticas individually and by a team in which he was a member, are forfeited and disqualified. Likewise, any competitive results obtained by him individually or by any team in which he participated as a member from the date of his positive sample on 13 March 2016 until the date of his provisional suspension are hereby retroactively forfeited and disqualified.
4. This decision is pronounced without costs to Mr. Guillén Ticas, other than the costs which he has incurred personally in connection with preparing his defense and attending the hearing by video/audio conference from El Salvador on 9 June 2016. Any costs of World Archery Federation to be assumed by Federacion Salvadorena shall be calculated and communicated separately by the Secretary General.
5. This decision may be appealed exclusively to the Court of Arbitration for Sport within twenty-one (21) days from the date of receipt of the full written decision of the Anti-Doping Panel containing an explanation of the reasons for the above sanctions.

Lausanne, 5 July 2016



John A. Faylor
President
Anti-Doping Panel
World Archery