

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE ULTIMATE
FIGHTING CHAMPIONSHIP ANTI-DOPING POLICY & THE UFC
ARBITRATION RULES**

BETWEEN

GERALDO DE FREITAS JÚNIOR (“ATHLETE”)

Applicant

- and -

UNITED STATES ANTI-DOPING AGENCY (“USADA”)

Respondent

A W A R D

Introduction

1. The United States Anti-Doping Agency (“USADA”) charges Geraldo Augusto de Freitas Junior (the “Athlete”) with violations of the Ultimate Fighting Championship (“UFC”) Anti-Doping Policy (“ADP”) and seeks a sanction of a two-year period of ineligibility. The Athlete denies that he violated the ADP and argues that no sanction should be imposed. For the reasons that follow, I find that, notwithstanding the Athlete’s emphatic and earnest protestations that he has never used or attempted to use any prohibited substance, USADA has met its burden to establish a violation of the ADP and I uphold the requested two-year period of ineligibility.

The Parties

2. The Athlete is a 29-year-old mixed martial arts fighter from Brazil who competes in the bantamweight division. He signed a promotional contract with the UFC in January 2019, but that contract is no longer in effect. There is no dispute, however, that, at all relevant times, he was subject to the ADP. The Athlete maintains that he lacked the means to engage legal counsel, but he has been assisted throughout these proceedings by his manager and non-legal advisor, Andre Perderneiras.
3. USADA is an independent, nonprofit, non-governmental agency based in Colorado Springs, Colorado, whose mission is to preserve the integrity of competition, inspire true sport, and protect the rights of clean athletes. USADA independently administers the UFC’s year-round anti-doping program, which includes the in- and out-of-competition testing of all UFC athletes, investigation of any potential UFC Anti-Doping Policy Violation (“ADPV”), and the

results management of any ADPV. USADA is represented by its legal counsel, Jeff T. Cook and Nadia Silk of Colorado Springs, Colorado.

Factual Background

4. On January 25, 2019, by reason of his signing a contract with the UFC, the Athlete was added to the UFC Registered Testing Pool (“RTP”). He was informed that he was now subject to the ADP and to drug testing at any time and any location. He was provided a copy of the World Anti-Doping Agency (“WADA”) Prohibited List – a comprehensive document, also adopted by the UFC, that serves as the international standard for identifying substances and methods prohibited in sport. The Athlete completed the onboarding process with a USADA representative on January 28, 2019, which included a review of educational materials explaining the Athlete’s anti-doping responsibilities.
5. During his time in the RTP, the Athlete was tested a total of twelve times. One of those occasions was an out-of-competition collection of a urine sample on October 14, 2020. On that date, the Athlete completed a Doping Control Official Record and listed on the accompanying Declaration of Use Form only whey protein, clavulin (an antibiotic), and dipirona (a non-steroidal anti-inflammatory). In accordance with applicable WADA testing guidelines, USADA collected two samples – an “A sample” and a “B sample” – both of which were labeled with the sample code number 1631118.
6. The A and B samples were then transmitted to and received by a WADA-accredited laboratory in Rio de Janeiro, Brazil (the “Laboratory”). The Laboratory has maintained its WADA accreditation since 2016, when it was reinstated following a period of suspension. The Laboratory was fully accredited at all times relevant to its possession and analysis of the Athlete’s October 14 A and B samples.
7. On October 29, 2020, the Laboratory completed a series of standard out-of-competition tests on the A sample. Pursuant to WADA guidelines, the Laboratory removed an aliquot from the A sample and then froze the remainder of the bottle, maintaining it in a “cold chamber” storage facility with a “biometric access system” with access limited only to authorized personnel. The Laboratory reported the out-of-competition test results on the A sample as follows: “No Prohibited Substance(s) or Prohibited Method(s), or their Metabolite(s) or Marker(s) on the test menu were detected.”
8. On November 17, 2020, USADA sent a letter to the Athlete informing him that “the reported test results do not indicate the presence of any prohibited substance and/or method.” The letter went on to state: “We may retest or reanalyze any Sample in accordance with the applicable rules, and therefore, we may retain all associated data or Samples for future reference.”
9. Under the WADA Prohibited List, anabolic agents – a category of steroids that includes testosterone administered exogenously – are prohibited at all times, in- and out-of-competition. However, standard out-of-competition anti-doping tests do not analyze for the presence of exogenous testosterone because a traditional mass spectrum analysis of urine cannot distinguish between testosterone of endogenous origin (produced naturally in the body)

and exogenously administered testosterone which is prohibited. Standard out-of-competition initial testing of urine does, however, measure the general concentration of testosterone, several of its biomarkers and their ratios. For each individual athlete, those ratios are tracked over time by a WADA-run data clearinghouse known as ADAMS (Anti-Doping Administration and Management System) that produces a Steroidal Athlete Biological Passport (the “Steroidal ABP”) for each athlete.

10. If a particular urine test discloses an “atypical” or otherwise “suspicious” deviation from past results in an athlete’s Steroidal ABP, further and more sophisticated testing (known as a “Confirmation Procedure”) is indicated to determine whether such deviation is the result of exogenously administered testosterone. In such cases, the relevant WADA Technical Documents call for the use of Gas Chromatography Combustion Isotope Ratio Mass Spectrometry (“GC/C/IRMS”) which can reliably differentiate between endogenous and exogenous testosterone in urine.
11. Upon receipt of the results of the initial testing of the Athlete’s A sample, USADA evaluated the Athlete’s Steroidal ABP and determined that those results disclosed an “atypical” finding that indicated the need for a Confirmation Procedure by GC/C/IRMS. Accordingly, on December 1, 2020, USADA requested that the Laboratory perform that Confirmation Procedure.
12. On January 8, 2021, the Laboratory reported to USADA an Adverse Analytical Finding (“AAF”) based on its GC/C/IRMS testing of the Athlete’s A sample. The test report stated: “The GC/C/IRMS results are consistent with the exogenous origin” of testosterone and a number of its markers or metabolites, including androsterone, etiocholanone, 5 α Adiol and 5 β Adiol.
13. On January 11, 2021, USADA notified the Athlete of the AAF and informed him of his right to request testing of his B sample and to be present at the Laboratory for the opening and analysis of the B sample. USADA also notified the Athlete that, in accordance with the ADP, it was imposing a Provisional Suspension prohibiting him from competing in any UFC bout until the conclusion of any further proceedings regarding the AAF.
14. The Athlete’s manager, Mr. Perderneiras, responded that the Athlete would not waive testing of the B sample and that the Athlete wanted to be present for the opening and analysis of the B sample. Mr. Perderneiras also requested that the B sample be sent to and analyzed by “any American lab” instead of the Laboratory in Brazil, because he believed that Laboratory had “a lot of wrong results” in the past. Mr. Perderneiras was informed by USADA that, under WADA’s International Standards for Laboratories (“ISL”), the B sample Confirmation Procedure was required to be performed at the same laboratory as the A sample Confirmation Procedure.
15. On January 21, 2021, USADA sent Mr. Perderneiras the Laboratory’s full documentation package regarding both the initial testing results and the Confirmation Procedure results for the A sample. The Athlete responded immediately that there was a discrepancy between the Laboratory Reference Number for the Athlete’s sample on the earlier reports (20A02235) and the Laboratory Reference Number appearing on certain pages of the documentation package

(20A02225). The next day, January 22, 2021, USADA sent a corrected version of the documentation package, explaining that the discrepancy in the Laboratory Reference Numbers resulted from a manual transcription error and that the more relevant identification number was the urine sample code number – 1631118 – which is what ties the sample to the laboratory results, and that the urine sample code number was the same on both the Laboratory Certificate of Analysis and the test report.

16. Between February 2 and February 5, 2021, the Athlete, accompanied by an advisor with relevant laboratory experience, attended the B sample opening and analysis. During his visit to the Laboratory, the Athlete observed a laboratory apparatus – a Fischer Scientific heater used to warm samples to the temperature necessary for analysis – with what appeared to be an out-of-date maintenance label. The Athlete believes the heater was used in the analysis of his B sample.
17. In its test report of the B sample, dated February 5, 2021, the Laboratory confirmed the results of the initial A sample Confirmation Procedure: it identified an AAF for the presence of the same exogenous forms of testosterone and its markers and metabolites found in the A sample. On February 9, 2021, USADA sent the Athlete a copy of the confirmatory Laboratory report. Later in February, the Athlete delivered three supplement products he had been using to the Laboratory for analysis of the presence of testosterone. The Laboratory reported that no Prohibited Substances were found in any of those products.

Procedural Background

18. On March 17, 2021, USADA formally charged the Athlete with ADPVs for the presence and use or attempted use of Prohibited Substances. The Athlete was informed of his right to request a hearing to contest the charges before a neutral arbitrator appointed by McLaren Global Sport Solutions (“MGSS”), the administrator of the arbitration rules adopted by the UFC.
19. On April 15, 2021, the Athlete applied for arbitration with a request for a waiver of the arbitration filing fee. On May 12, 2021, MGSS granted a partial waiver of the filing fee and on May 14, 2021, appointed the undersigned as the Arbitrator for this matter. On May 24, 2021, the Athlete again requested a full waiver of the filing fee due to financial hardship, and MGSS granted that request.
20. An initial hearing was held via a Zoom videoconference on May 28, 2021, which was followed by the issuance of Procedural Order No. 1. Pursuant to that Order, a schedule was established for written submissions and a hearing date set for July 21, 2021. The hearing was held on that date via a Zoom videoconference. At the hearing, each of the parties made opening and closing statements. USADA called three witnesses: Dr. Matthew Fedoruk, Chief Science Officer of USADA; Dr. Henrique Marcelo Gualberto Pereira, Director of the Laboratory; and the Athlete. The Athlete’s proposed expert witness, Dr. Roger de Moraes, was taken ill shortly before the hearing, was hospitalized at the time of the hearing and therefore was unable to attend. The Athlete called no other witnesses.

21. At the conclusion of the hearing, the Arbitrator inquired whether the Athlete would like a brief extension of the hearing to enable his proposed expert to recover from his illness and provide testimony at a later date. The Athlete stated he would indeed like such an extension and was asked to inform the Arbitrator as soon as possible when his proposed expert would be well enough to testify. On July 23, 2021, the Athlete informed the Arbitrator that his expert remained hospitalized with little prospect of a prompt recovery and requested that he instead be permitted to submit new expert opinions from two additional experts, Ricardo Brito de Oliveira Junior, a physical/biomedical educator, and Orlando Barbosa da Silva Folhes, a professor at the Pontifical Catholic University and physical trainer for high performance athletes.
22. On July 26, 2021, USADA stated that it did not object to the submission of additional expert reports, so long as it was given the opportunity to submit one or more expert reports in response. On August 16, 2021, the Athlete submitted the expert opinions of Mr. Brito de Oliveira Junior and Mr. Barbosa da Silva Folhes. On September 7, 2021, USADA submitted a supplemental expert opinion from Dr. Fedoruk, responding to the arguments raised by the Athlete's new experts.
23. On September 15, 2021, the hearing was resumed, again via Zoom Videoconferencing, for the limited purpose of hearing the testimony of the Athlete's new experts and any response from USADA. At the resumed hearing, testimony was received from Mr. Brito de Oliveira, Junior, Mr. Barbosa da Silva Folhes, and Dr. Fedoruk.
24. At the conclusion of the hearing, both parties expressly confirmed that their right to be heard had been fully respected throughout the proceedings.

Relevant Provisions of the ADP

25. UFC ADP rules provide, so far as material, as follows:

ARTICLE 2: ANTI-DOPING POLICY VIOLATIONS

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 Policy Violation under Article 2.1 (subject to the other express provisions of this Anti-Doping Policy that do incorporate concepts of intent, knowledge, *Fault*, *No Fault or Negligence* or other evidentiary standards).
- 2.1.2. Sufficient proof of an Anti-Doping Policy 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, after notice to the Athlete is provided in Article 7, the B Sample is not analyzed (including

due to the Athlete's waiver of its right to have the B Sample 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 in the conditions described in the *WADA International Standard For Laboratories*, where the *Athlete's A or B Sample* is split into two parts and the analysis of the confirmation part of the split *Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the first part of the split *Sample* or the Athlete waives analysis of the confirmation part of the split *Sample*.

- 2.1.3. Except for those substances for which a quantitative threshold or *Decision Concentration Level* is specifically identified in the *UFC Prohibited List*, and as provided in Articles 2.1.3.1 and 2.1.3.2, the presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an Anti-Doping Policy Violation.

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

- 2.2.1. It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body and that no *Prohibited Method* is *Used*. Accordingly, except as specifically provided otherwise in this Anti-Doping Policy, 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 Policy Violation for *Use* of a *Prohibited Substance* or a *Prohibited Method* (subject to the other express provisions of this Anti-Doping Policy that do incorporate concepts of intent, knowledge, *Fault*, *Negligence* and other standards).
- 2.2.2. The success or failure of the *Use* or *Attempted Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an Anti-Doping Policy Violation to be committed.

ARTICLE 3: PROOF OF DOPING

3.1. Burdens and Standards of Proof

USADA shall have the burden of establishing that an Anti-Doping Policy Violation has occurred. The standard of proof shall be whether *USADA* has established an Anti-Doping Policy Violation with *Clear and Convincing* evidence. Where this Anti-Doping Policy places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an Anti-Doping Policy Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a preponderance of the evidence except as otherwise provided herein.

3.2. Methods of Establishing Facts and Presumptions

Facts related to Anti-Doping Policy Violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

- 3.2.1. Analytical methods or decision limits approved by *WADA* after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. *Decision Concentration Levels* set forth in the UFC Prohibited List shall not be subject to challenge.
- 3.2.2. *WADA*-accredited laboratories, and other laboratories approved by *WADA*, are presumed to have conducted Sample analysis and custodial procedures in accordance with the *International Standard for Laboratories*. The *Athlete* or other *Person* may rebut this presumption by establishing that a departure from the *International Standard for Laboratories* occurred which could reasonably have caused the *Adverse Analytical Finding*. If the *Athlete* or other *Person* rebuts the preceding presumption by showing that a departure from the *International Standard for Laboratories* occurred which could reasonably have caused the *Adverse Analytical Finding*, then *USADA* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.

ARTICLE 10: SANCTIONS ON INDIVIDUALS

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 or potential increase in the period of *Ineligibility* under Article 10.2.3:

- 10.2.1. The period of Ineligibility shall be two years where the Anti-Doping Policy Violation involves a *Non-Specified Substance* or *Non-Specified Method*.

10.4. No Violation where there is *No Fault or Negligence*

- 10.4.1. If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault* or *Negligence*, then there shall be no violation of this Anti-Doping Policy, subject to the right of *UFC* or an *Athletic Commission* to disqualify bout results with the resulting consequences.
- 10.4.2. Without limitation of other evidentiary methods, an *Athlete* shall bear *No Fault* or *Negligence* in an individual case where the *Athlete*, by *Clear and Convincing* evidence, demonstrates that the cause of the *Adverse Analytical Finding* was due to a (i) *Contaminated Product* or (ii) *Certified Supplement*. In such a case, there will be no Anti-Doping Policy Violation based on the

Adverse Analytical Finding and the *Athlete* will not be permitted to compete in a *Bout* until, based on follow-up testing, the *Prohibited Substance* is no longer present in the *Athlete's Samples* (or below the applicable *Decision Concentration Level* for such *Prohibited Substance*, if any) or no appreciable performance advantage is obtained from the presence of the substance.

10.5. Reduction of the Period of *Ineligibility* based on degree of *Fault*

10.5.1. Reduction of sanctions for *Specified Substances* or *Specified Method* for Violations of Article 2.1, 2.2 or 2.6.

Where the Anti-Doping Policy Violation involves a *Specified Substance* or *Specified Method*, then the period of *Ineligibility* shall be, at a minimum, a reprimand and no period of *Ineligibility*, and at a maximum, the period of *Ineligibility* set forth in Article 10.2 depending on the *Athlete's* or other *Person's* degree of *Fault*.

10.5.2. Other Anti-Doping Policy Violations

For Anti-Doping Policy Violations not described in Article 10.5.1, 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*.

APPENDIX 1: DEFINITIONS

No Fault or Negligence: The *Athlete* or other *Person* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method* or otherwise violated an Anti-Doping Policy. Except in the case of a *Minor*, for any violation of Article 2.1, the *Athlete* must also establish, how the *Prohibited Substance* entered his or her system.

The Parties' Submissions

26. The parties' written and oral submissions have all been considered and are summarized as follows:

Athlete's Submissions

27. The Athlete insists he has never used or attempted to use any prohibited substance and therefore submits that the AAF must be erroneous. The Athlete posits several "possible" reasons for the alleged "error."
28. First, because USADA's letter of November 17, 2020, stated that the initial analysis of his sample did not indicate the presence of a prohibited substance, the Athlete argues that some

unspecified “cross-contamination” of his A sample may have occurred at the Laboratory following the initial analysis.

29. Second, the Athlete contends the AAF is suspect because the Laboratory at which his samples were tested is “unreliable.” The Athlete notes that (i) the Laboratory’s WADA-accreditation was suspended in 2016 (although later reinstated); (ii) the Laboratory’s initial documentation package regarding the Athlete’s test results contained an incorrect Laboratory Reference Number and other errors (although promptly corrected); and (iii) the Laboratory was continuing to use a sample heater with what appeared to be an out-of-date maintenance label.
30. Third, because the Athlete had been taking prednisolone – an anti-inflammatory glucocorticoid that was prescribed by his doctor and permitted for out-of-competition use – he asserts it is “possible” that it was the prednisolone, and not exogenous testosterone, that caused the “erroneous” AAF. He argues that prednisolone “has a similarity” to testosterone, can “cause variations in testosterone . . . especially after physical activity,” and that he had engaged in intense training just before the October 14 sample collection. The Athlete argues that because prednisolone “significantly influences the body’s metabolism and can therefore significantly alter results,” it is possible the drug “interact[ed] in the body and interfere[d] with the analysis process.” The Athlete cited two studies that he claims show potential cross-reaction in the analysis of prednisolone with testosterone in urine by the immunoassay method, although his expert, Mr. Brito de Oliveira Junior, acknowledged that “there was no published material with similar research using the mass spectrophotometry methodology,” which was the process used to conduct the Confirmation Procedure that resulted in the AAF.
31. Finally, the Athlete points to a number of non-analytical factors that he claims support his contention that he did not use a prohibited substance. For example, the Athlete asserts that, had he used an anabolic steroid such as exogenous testosterone, he would have gained weight, lost body fat, and improved his performance, strength, and motivational response. The Athlete’s expert, Mr. Barbosa da Silva Folhes, analyzed a variety of data regarding the Athlete between December 2019 and July 2021 and concluded that he displayed none of the changes associated with the use of anabolic steroids.

Respondent’s Submissions

32. Article 3.1 of the UFC ADP provides that: “USADA shall have the burden of establishing that an Anti-Doping Policy Violation has occurred.” USADA contends it has met that burden by presenting sufficient evidence to establish a violation of both Article 2.1(presence) and Article 2.2 (use) of the ADP.
33. Article 2.1.2 provides in relevant part:

Sufficient proof of an Anti-Doping Policy Violation under Article 2.1 is established by any of the following: . . . 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* . . .

34. USADA submits the evidence is clear and unrefuted that a GC/C/IRMS analysis was conducted on the Athlete's sample by a WADA-accredited laboratory in compliance with the relevant WADA requirements and that, as reported by the Laboratory, the analysis "indicate[d] the administration of Testosterone or precursors." Further, the results from the B sample "fully corroborate the result of the A sample." USADA's expert, Dr. Fedoruk, reviewed those results and concluded that they "meet the criteria for an AAF as per the WADA Technical Document 2019 IRMS – Detection of Synthetic Forms of Endogenous Anabolic Androgenic Steroids by GC/C/IRMS" and "there were no departures from the WADA International Standard for Laboratories (ISL)." And even apart from Dr. Fedoruk's confirmatory opinion, under Article 3.2.2. of the ADP, WADA-accredited laboratories are "presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories." That presumption, USADA maintains, has not been rebutted and USADA has therefore established a violation of Article 2.1.
35. Article 2.2 provides in relevant part that "[i]t is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body" and "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 Policy Violation for Use of a Prohibited Substance." Given the Laboratory's determination of an AAF for presence in the Athlete's body of a Prohibited Substance, WADA contends it necessarily follows that the Athlete has also committed a use violation under Article 2.2.
36. With respect to the Athlete's claim that the Laboratory may have contaminated his A sample with exogenous testosterone and its markers and metabolites, USADA argues that there exists no evidence of any kind to support that theory. USADA notes that after the Laboratory removed an aliquot of the A sample for initial testing, the remainder of the A sample was frozen and securely maintained in a cold storage facility with access strictly limited to authorized personnel, making it highly unlikely the A sample was tampered with. Moreover, Dr. Fedoruk has opined – without contradiction – that it would not even be possible to contaminate an athlete's sample in any manner that could generate a positive GC/C/IRMS analysis. In any event, USADA points out that the Athlete's B sample, which had been sealed at all times since it was delivered to the Laboratory, was opened and analyzed in the presence of the Athlete and confirmed the AAF reported for the A sample.
37. Concerning the Athlete's assertion that the Laboratory is unreliable and that its test results are suspect, USADA responds as follows: While it is true the Laboratory's WADA-accreditation was suspended for a brief period in 2016, that suspension had nothing to do with the Laboratory's GC/C/IRMS capabilities. The suspension was promptly rescinded, and the Laboratory has retained its WADA accreditation at all times relevant to these proceedings. The initially incorrect Laboratory Reference Number in the document package was nothing more than a human transcription error that was immediately corrected. And the supposedly out-of-date maintenance label on the sample heater referred only to a no-longer-relevant calibration process that in the past required periodic inspections to ensure the heater was maintaining a temperature level appropriate for sample analysis. The temperature of the heater is now – and has been for at least two years – monitored by an external thermometer, a process the Laboratory Director states has been audited and approved by an accreditation body of the International Standards Organization ("ISO"). USADA argues that the record is unclear

whether the heater in question was even used in the analyses of the Athlete's samples, but even if it was, there is no basis to believe the heater was not functioning properly or that its use could have caused an erroneous AAF in both his A and B samples.

38. With respect to the Athlete's assertion that his use of medically prescribed prednisolone may have caused the AAF for presence of exogenous testosterone and its markers and metabolites, Dr. Fedoruk – an acknowledged expert in, among other things, sports drug testing, laboratory analysis, doping substances and detection methods – has testified that no such result is possible when a sample has been analyzed by the GC/C/IRMS method. In Dr. Fedoruk's opinion: "Exogenous testosterone use can be unequivocally confirmed using GC/C/IRMS which is capable of measuring the carbon isotope ratio of urinary steroids and this allows differentiation of both." GC/C/IRMS analysis uses the ratio of certain stable carbon isotopes, which are measured and compared with both the target analytes (here, testosterone and its markers and metabolites) and other endogenous reference compounds. The presence of exogenous testosterone is indicated if there is a significant difference in the ratio of the carbon isotopes as measured in both the reference compounds and the target analytes. According to Dr. Fedoruk, neither ingestion of a corticosteroid such as prednisolone, nor physical activity, could "influence or change the endogenous reference compound, nor testosterone and its metabolites as target analytes in the IRMS analysis." Dr. Fedoruk further states:

There is no published scientific evidence, nor any biochemical explanation, suggesting that ingestion of corticosteroids would affect the isotopic signature of the endogenous reference compound or target analytes of testosterone and/or its metabolites reported by the laboratory. In addition, exercise, training, or competition are not confounding factors of IRMS analysis, therefore [they have] no impact on the analysis or the result obtained.

39. USADA also contends there is no merit to the Athlete's claim that the absence of observable athletic performance enhancement supports his assertion that he has never used a prohibited substance. As Dr. Fedoruk states:

Absence of performance-enhancement is not a credible argument which in any way affects the confirmed presence of a prohibited anabolic agent in the athlete's urine sample. The morphological and physiological parameters presented by the athlete's expert do not have any impact on the adverse analytical finding of a prohibited substance in the athlete's urine.

40. Finally, USADA asserts that the Athlete has not established either that he bears No Fault or Negligence under Article 10.4 of the ADP or that he is entitled to a reduction in sanction under Article 10.5. The argument that his use of prednisolone may have caused the AAF is nothing more than a theory, unsupported by any evidence. Accordingly, USADA concludes, "he is unable to meet the burden required for sanction reduction or elimination" and a two-year period of ineligibility under Article 10.2.1 is the appropriate sanction.

Findings

41. The ADP is crystal clear that a presence violation under Article 2.1 is sufficiently established “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.” That is precisely what USADA has demonstrated.
42. Although initial testing of the Athlete’s October 14, 2020, sample proved negative, the Athlete was informed by USADA’s letter of November 17, 2020, that “[w]e may retest or reanalyze any Sample in accordance with the applicable rules, and therefore, we may retain all associated data or Samples for future reference.” Review of the Athlete’s Steroidal ABP disclosed an atypical finding and USADA requested the Laboratory to perform a Confirmation Procedure by GC/C/IRMS on the remainder of the A sample. That analysis produced a positive result for exogenous testosterone and a number of its markers and metabolites, a result later confirmed by GC/C/IRMS analysis of the B sample. USADA therefore had a full and complete basis on which to charge the Athlete with a violation of the ADP.
43. The Athlete, with every appearance of sincerity, steadfastly maintains he has never used or attempted to use any prohibited substance and insists that the confirmed AAF must be a mistake and should be set aside. Although the Athlete has proffered a variety of theories as to how this “mistake” might have occurred, I find none of them sufficient to overcome the showing made by USADA of a plain violation of the ADP.
44. The Athlete’s claim that contamination of the A sample may have occurred at the Laboratory is sheer speculation. The claim is not only speculative, but highly improbable. Following initial testing, the remainder of the A sample was frozen and secured in a storage facility with access limited to authorized personnel. USADA’s expert, Dr. Fedoruk, has opined that it would not even be possible to “contaminate” a sample in any way that could produce a positive IRMS result. Beyond that, the B sample, which had remained sealed since its delivery to the Laboratory, was unsealed, opened and analyzed in the presence of the Athlete and confirmed the AAF reported for the A sample. Under Article 3.2.2 of the ADP, WADA-accredited laboratories “are presumed to have conducted Sample analysis and custodial procedures in accordance with” the ISL, a presumption that can be rebutted only by evidence of a departure from that standard “which could reasonably have caused the Adverse Analytical Finding.” No such evidence has been adduced.
45. That the Laboratory’s WADA accreditation had previously been suspended in June of 2016, is of no moment, since the accreditation was promptly reinstated in July of 2016, and the Laboratory has maintained its WADA accreditation continuously from its reinstatement to the present date, including throughout all stages of these proceedings. Moreover, the temporary suspension does not appear to have been connected in any way to the conduct of the Laboratory in this case. Article 3.2.2 of the ADP accords a presumption of compliance with the ISL to “WADA-accredited laboratories and other laboratories approved by WADA.” The Laboratory here falls within that category. I have been guided in this regard by the decision of Chief UFC Arbitrator, Richard McLaren, in *USADA v. Olivieri*, UFC Arbitration (2017). In that matter, the athlete argued that the Laboratory’s temporary suspension supported his

request for dismissal of his case, which, as here, was based on a positive test result. The Chief Arbitrator wrote:

The Applicant submits that the fact that the accreditation of the Rio Laboratory was suspended in June of 2016 means that the laboratory had not carried out the proper analysis on the Sample. The Sample was analyzed and reported by the Rio Laboratory in March of 2016. At that time the Rio Laboratory was an accredited laboratory of WADA. A suspension some three months later of the laboratory's accreditation does not mean that the sample analysis in March was incorrect or flawed... Therefore, I conclude that the temporary suspension was in no way connected to the earlier conduct of the Rio Laboratory at the time of the analysis of the Applicant's Sample.

Id. at ¶¶ 8.8, 8.9.

Likewise, here – indeed, *a fortiori* here – the temporary suspension of the Laboratory's accreditation in 2016 does not mean the sample analysis conducted in January and February 2021 was incorrect or flawed.

46. The Athlete's argument that the Laboratory is unreliable because of errors in its initial documentation package is a more troublesome matter. It is not disputed that the Laboratory documentation package sent to the Athlete on January 21, 2021, erroneously identified the Laboratory Reference Number as 20A02225, when the correct Laboratory Reference Number for the Athlete's sample was 20A02235, suggesting that perhaps the Laboratory was actually reporting the results for a different athlete. The initial documentation package also contained various graphs that did not correspond to the Athlete's A sample. These errors were immediately pointed out by the Athlete and a fully corrected documentation package was sent to him the next day, with the explanation that the discrepancies were the result of human typographical errors and had no effect on his test results. To err may be human, but the ADP accords to WADA-accredited laboratories a presumption of compliance with strict international standards and imposes a heavy burden on an athlete to rebut that presumption. It is therefore incumbent upon WADA to ensure that errors of the kind made here are exceptionally infrequent and do not reflect a pattern of carelessness incompatible with the presumption of compliance granted to WADA-accredited laboratories. However, as I have found, the Laboratory remains entitled to the Article 3.2 presumption, and that presumption can be overcome only with evidence of a "departure from the *International Standard for Laboratories* . . . which could reasonably have caused the [AAF]." (emphasis in original.) As regrettable as these errors were, there is simply no evidence that they caused the AAF or demonstrate any flaws in the analysis of or custodial procedures regarding the Athlete's sample. Accordingly, I find that the errors in the initial documentation package do not rebut the Article 3.2 presumption of compliance with the ISL.
47. The Athlete's contention that the Fischer Scientific sample heater he observed at the Laboratory had not been properly maintained (as evidenced by what the Athlete describes as an out-of-date maintenance label), seems little more than a misunderstanding of what he saw. As explained by the Director of the Laboratory, the label did not refer to general maintenance of the apparatus, but to a no-longer-relevant calibration process that in the past required

periodic inspections to ensure the heater was warming samples to the appropriate temperature. For the past two years at least, the temperature of the heater has been monitored by an external thermometer, a procedure audited and approved by an accreditation body of the ISO. This appears to be a plausible explanation, but in any event, the Athlete's suggestion that use of the heater may have caused the AAF is speculation, unsupported by any evidence. Once again, the Article 3.2 presumption of compliance with the ISL in the conduct of sample analysis can be rebutted only by evidence that a departure from those standards caused the AAF. This record is devoid of any such evidence.

48. I accept the testimony of Dr. Fedoruk that the Athlete's use of prednisolone could not have caused the positive IRMS result for presence of testosterone and its markers and metabolites in the Athlete's sample. Indeed, based on the nature and scientific underpinnings of the IRMS method of analysis, Dr. Fedoruk concludes that any such erroneous result would not be possible. Dr. Fedoruk has described IRMS as "the gold-standard analysis method to definitively identify the administration of an exogenous anabolic agent." He points out that there exists "no published scientific evidence, nor any biochemical explanation" that might support a contention that use of prednisolone could have caused an erroneous IRMS result. The Athlete's expert, Mr. Brito de Oliveira Junior, concedes as much when he states that while he has seen "studies reporting cross-reaction in the analysis of prednisolone with testosterone in urine by the immunoassay method . . . there was no published material with similar research using the mass spectrophotometry methodology." The Athlete and his expert offer nothing more than the "possibility" that the Athlete's use of prednisolone might have caused the AAF. But possibilities are not enough (*see USADA v. Arruda da Silva*, UFC Arbitration (2020) at ¶ 60), and surely cannot overcome the testimony of an acknowledged expert in sports drug testing that prednisolone could not and did not cause the AAF.
49. The argument that the Athlete should be found not to have committed a violation of the ADP because, based on certain measurements by his expert, he did not exhibit any of the performance-enhancing benefits associated with use of anabolic agents, requires little discussion. Under Article 2.1 of the ADP, a violation is established if analysis of the B sample confirms the presence of a prohibited substance found in the A sample. Nothing more is needed. Article 2.2 of the ADP is even more explicit: "The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be used for an Anti-Doping Policy Violation to be committed." Given the confirmed presence of a prohibited anabolic agent in the Athlete's sample, the absence of observable performance-enhancing benefits is not relevant.
50. Article 10.2.1 of the ADP sets forth the period of ineligibility for the presence and use of Non-Specified Substances such as testosterone. It states:

The period of *Ineligibility* for a violation of Articles 2.1 [presence], 2.2 [use] or 2.6 [possession] shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 or potential increase in the period of *Ineligibility* under Article 10.2.3:

10.2.1 The period of *Ineligibility* shall be two years where the Anti-Doping Policy Violation involves a *Non-Specified Substance* or *Non-Specified Method*.

51. The Athlete advances no argument that he is entitled to a reduction of the two-year period of ineligibility under Article 10.5. His contention that he has never used or attempted to use any prohibited substance and has therefore committed no violation of the ADP is, in effect, an argument under Article 10.4 that there is no violation because he bears No Fault or Negligence. But to succeed on that argument, the Athlete must establish “how the Prohibited Substance entered his or her system,” in accordance with the definition of No Fault or Negligence in the ADP. Other than his speculative assertion that prednisolone might possibly have caused the AAF, the Athlete made no effort to establish how exogenous testosterone and its markers and metabolites entered his system. He has instead chosen to rely on the argument that the positive IRMS result must have been a mistake, since he is certain he has never used a prohibited substance. The Athlete having failed to sustain that argument, I am left with no choice other than to uphold the requested two-year period of ineligibility.

CONCLUSION

52. USADA has established that the Athlete violated Articles 2.1 and 2.2 of the ADP. The appropriate sanction is a two-year period of ineligibility beginning on January 11, 2021, the date the Provisional Suspension was imposed, and ending on January 10, 2023.

DATED AT STONE RIDGE, NEW YORK, U.S.A. THIS 8TH DAY OF OCTOBER, 2021.


Jeffrey A. Mishkin