



Arbitration CAS 2016/A/4758 Aline de Souza Facciolla Ferreira v. International Weightlifting Federation (IWF), award of 26 June 2017

Panel: The Hon. Michael Beloff Q.C. (United Kingdom), President; Mr Jeffrey Benz (USA); Prof. Denis Oswald (Switzerland)

Weightlifting

Doping (boldenone)

Establishment of no significant fault or mitigating circumstances

On their own, an athlete’s clean record, the fact that s/he might have had good reason not to resort to use of a prohibited substance, the mere statement that s/he made every effort to check that s/he took only permissible medications, supplements and vitamins, cannot displace the conclusion that the athlete’s case is neither a case of “non-significant fault”, nor a case where mitigating circumstances could apply under the applicable rules.

I. PARTIES

1. Ms Aline de Souza Facciolla Ferreira, the Appellant (“the Athlete”), is a Brazilian national professional weightlifting athlete and a minor.
2. The International Weightlifting Federation, the Respondent (“the IWF”) is the governing body for the sport of weightlifting worldwide with its registered seat in Lausanne, Switzerland, and its headquarters situated in Budapest, Hungary.
3. The Athlete appeals the decision (“the Decision”) of the IWF Hearing Panel (“the IWF Panel”) which found her guilty of an anti-doping rule violation (“ADRV”) and imposed a sanction of four years’ ineligibility.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence before and at the hearing. Additional facts and allegations found in the parties’ written submission, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. The Athlete, born on 4 June 1999, became a professional athlete in 2010, and has since then received many prizes for her achievements in her chosen sport.
6. For five years the Athlete has been coached by the Brazilian Navy's Lieutenant Carlo Henrique Aveiro ("the Coach").
7. Until the matter which gave rise to the appeal the Athlete who had been subject to in-competition doping control on several occasions, had never tested positive.
8. In December 2015, the Athlete was competing in the South American Senior, Junior and Youth Championships in Lima, Peru ("the Competition").
9. On 9 December 2015, the Athlete was subjected to an in-competition drug test, and provided a sample of urine, which was subsequently tested by a World Anti-Doping Agency ("WADA") accredited laboratory in Montreal. The A sample disclosed an Adverse Analytical Finding ("AAF") of Boldenone and its metabolites.
10. Boldenone is a well-known steroid which is widely and improperly used by athletes, especially in the sport of weightlifting as is shown by the record of bans imposed on such athletes because of the presence of the substance in their system.
11. On 28 January 2016, the Athlete received a Notice of Charge and of a provisional suspension.
12. The Athlete, for, as she claims, financial constraints, declined to request analysis of the B sample.
13. On 13 May 2016, the Athlete provided a written defence.
14. On 16 July 2016, the IWF Panel handed down its Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 10 August 2016, in accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration ("the Code"), the Appellant filed her statement of appeal with the Court of Arbitration for Sport ("the CAS").
16. On 29 August 2016, in accordance with Article R51 of the Code, the Appellant filed her appeal brief, within the time limit extended pursuant to Article R32, para. 2, of the Code.
17. On 28 September 2016, in accordance with Article R55 of the Code, the Respondent filed its answer.
18. On 6 October 2016, the Appellant informed the CAS Court Office of her preference for a hearing to be held.
19. On 7 October 2016, the Respondent informed the CAS Court Office of its preference for the Panel to render an award on the sole basis of the parties' written submissions.

20. On 22 December 2016, the Appellant reiterated her request for a hearing to be held, providing reasons for such request.
21. On 16 March 2017, the Panel having opted to hold a hearing, the CAS Court Office sent the parties an Order of Procedure which was returned duly signed on 23 March 2017 by both parties.
22. In accordance with Article R57 of the Code, the parties were heard at the hearing, held on 29 March 2017 at the CAS offices, in Lausanne, Switzerland.

The following were in attendance:

Panel:

The Hon Michael J Beloff QC, President;
Mr Jeffrey Benz, Arbitrator;
Mr Denis Oswald, Arbitrator;
Assisted by Mr Daniele Boccucci CAS Counsel.

For the Appellant:

Mr Pedro Fida, attorney-at-law (by video-conference);
Ms Aline de Souza Facciolla Ferreira, the Athlete (by video-conference);
Mr Carlos Henrique Aveiro (the coach), witness (by video-conference);
Mr Gabriel Araujo, interpreter (by video-conference).

For the Respondent:

Mr Ross Wenzel, attorney-at-law;
Mr Nicolas Zbinden, attorney-at-law;
Mr Marcelo Muñoz (“the DCO”), witness (by teleconference).

23. The parties were given the opportunity to present their cases, examine the witnesses, make their submissions and arguments and answer questions asked by the Panel. At the start of the hearing the parties confirmed that they had no objection to the composition of the Panel and at its conclusion confirmed that their respective rights to be heard and to be treated equally in these arbitration proceedings had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

24. The Athlete's submissions, in essence, may be summarized as follows:

(a) Procedural Flaws

- i. Absence of an Interpreter. In breach of Article 5.3.8 and Article 5.4.1 of the World Anti-Doping Code of International Standards of Testing and Investigation (*sic!*) the Athlete (a Portuguese speaker) was addressed by the DCO in Spanish only, which explains any errors or omissions in the Doping Control Form ("DCF");
- ii. The IWF did not have the Athlete's parent authorization to make sample collection. This was contrary to the Annex C of the WADA Anti-Doping Code ("the WADA Code") (*sic!*);
- iii. The Athlete was unaccompanied by her coach. The Athlete claims that she requested that her coach accompany her but her request was denied by the DCO.

(b) Public Disclosure of the Athlete's Information. This was contrary to Article 14.3.6 of the IWF Anti-Doping Policy (the "IWF ADP") and was very damaging to her.

(c) Athlete's Investigation after Positive Test

- i. The Athlete (with limited financial resources) carried out her own research on all the medications and vitamins that she took during the Competition, both before taking them and after receipt of the Notice of Charge in order to track down the source of any contamination.
- ii. Due Diligence in Identifying the Potential Source of Boldenone metabolites in the Sample.
 - At all material times the Athlete had the assistance of a professional doctor recommended by the Brazilian Navy to advise her on her health and career. At the time of the competition she was taking some substances prescribed by her nutritionist Mr Yuri Costa Peres and medication and vitamins prescribed by her doctors.
 - She was assured by both that she could take these medications and vitamins since they did not contain any prohibited substances.
 - In order to confirm that those products were free from any prohibited substances:
 - She provided the WADA "Prohibited List" to her doctor and emphasized the need to respect said list.

- She analyzed and read the formulas prescribed by her doctor, subsequently cross-checking (as did the Coach) all the ingredients listed therein with the WADA Prohibited List.
- She bought the medications and her vitamins all of which from a well-known laboratory in order to prevent any contamination.
- She took a Vitamin B12, which was purchased by the Coach from outside Brazil, who confirmed that the said vitamin contained no prohibited substance.
- The Athlete informed the DCO that she was taking said medications and vitamins above, and that these medications and the B12 Vitamin were declared in the DCF, which proves her good faith.

iii. Source of the Boldenone or its metabolites

- Given the absence of Boldenone metabolites or Boldenone in said medications and vitamins, the only explanation for this substance to be present in her body would be the B12 Vitamin she took 15 (fifteen) days before the Competition, which (like Boldenone) is injectable.
- As a result, a cross-contamination occurred in the vitamins, which can sometimes occur as a discrepancy between the information available on the labels of the products and their actual composition.
- In the language of the Appeal Brief *"It cannot be excluded the probability that a potential cross-contamination may have occurred"*.

(d) Fundamental Rights Denied

- In the absence of financial resources to pay for the opening of her B Sample and the relevant document package, she did not have her fundamental rights respected before the IWF, as it and the Brazilian Weightlifting Federation simply ignored the Appellant's financial constraints.

(e) The Appellant did not aim at enhancing Performance

The Athlete relies on the following facts and matters:

- The Athlete has never been tested positive for drugs during all the years that she has been competing;
- Her A Sample contained an estimated concentration of 24 ng/mL of Boldenone and 1 ng/mL for metabolites, an extremely low amount of Boldenone and its metabolites, not capable of improving or affecting athletic performance;

- The Athlete had the chance to compete in the Summer Olympic Games in Rio 2016 and would not voluntarily have put her career generally and this opportunity in particular in risk by using prohibited substances, especially since due to her age, this was her last chance to participate in the Olympic Games before her retirement;
 - As an experienced athlete who had been subject to numerous anti-doping tests in the past, she would know that any Boldenone could have been easily detected.
- (f) The Facts surrounding the positive test support the finding of no fault or negligence.
- This case does not involve the voluntary use of a prohibited substance by the Athlete in order to improve her performance, but rather the use of the B12 Vitamin prescribed by a doctor.
 - The Athlete checked the substances contained in the B12 Vitamin and could never have conceived that Boldenone metabolites could be present in such a vitamin, commonly sold without the need for prescriptions and not itself a controlled drug;
 - Therefore, the Athlete should receive no penalty at all.
- (g) Even absent a finding of no fault or negligence, the applicable penalty – if any – shall be determined on the level of fault or negligence.

Based on the taxonomy in CAS 2013/A/3327 & CAS 2013/A/3335:

- Any suspension should be calibrated to the degree of fault.
 - Since the Athlete had no reason to know that the B12 Vitamin was contaminated with Boldenone metabolites, especially after proceeding with extreme caution by using a vitamin that was (1) prescribed by a professional, and (2) had the composition duly verified by her and her Coach, any negligence was so minimal that the only appropriate penalty would be the lowest possible sanction of a reprimand, pursuant to Article 10.5.1.2 of the IWF ADP and at the highest no more than a maximum two years Ineligibility, depending on the Athlete's or other Person's degree of Fault. A fortiori given that her violation was of a purely technical nature and no sporting advantage was sought or was obtained. No damage was done to the sport, or other competitors, not even inadvertently.
- (h) The ADRV was not intentional.
- The above submissions (a)-(g) are repeated *mutatis mutandis*. The Athlete did not cheat within the meaning of the Article 10.2.3 of the IWF ADP.

- (i) The Drastic Consequences already suffered by the Athlete.
 - The Athlete has recently lost a sponsorship from the Brazilian Weightlifting Federation (approx. US\$250,00/month), and will soon lose her salary from the Brazilian Navy (approx. US\$750,00/month) and the Brazilian Ministry Incentive for athletes (approx. US\$225,00/month) in view of her provisional suspension. She has suffered stress and inability already to compete in major competitions;
- (j) She has offered to provide substantial assistance in discovering or establishing ADRVs so entitling her to a reduction of her Period of Ineligibility under Article 10.6.1 of the IWF ADP, namely a scheme involving the Chilean coach Mr Luiz Lopes (“Mr Lopes”).
- (k) The way the IWF conducted the proceedings before the IWF Panel, *i.e.* by jointly dealing with the Athlete’s case with that of Ms Gonçalves and giving a combined decision, is inappropriate as the Athlete was a minor and confidentiality was needed to preserve her honour and fundamental rights.

25. The Appellant submitted the following requests for relief:

- i. That the present Appeal is admissible;*
- ii. That the Appealed Decision is set aside;*
- iii. No sanction and no period of ineligibility be imposed on the Athlete in view of the absence of fault or negligence (notwithstanding the fact that the Athlete has already served 07 (seven) months of a provisional suspension by today’s date);*
- iv. Alternatively, in the event CAS believes that the Athlete had any level of fault, that it be determined as a light degree of fault and, thus impose the minimum available sanction and time of suspension;*
- v. In case the CAS rules the Athlete shall be suspended, the period of ineligibility shall be significantly reduced to 2 (two) years or the minimum available due to the fact that the Athlete is a Minor and inexperienced and that the Athlete provided Substantial Assistance;*
- vi. The period of suspension eventually imposed be deemed to have started at an earlier date, counting from the date of the Sample collection, i.e. from 9 December 2015;*
- vii. In any case, that the period of Provisional Suspension served by the Athlete be credited against the total period of Ineligibility to be served, pursuant to Article 10.10.3.1 of the Regulations;*
- viii. The only results to be disqualified and ranking points to be forfeited will be those of the Competition;*
- ix. That the IWF covers and reimburses any and all costs and expenses of the Athlete in relation to the present proceedings and be the sole responsible for any eventual costs in connection with this appeal;*

- x. *That the Athlete is awarded moral and material damages in an amount to be determined by the Panel in view of the serious procedural and formal errors committed by the IWF and considering the time she has been unfairly provisionally suspended;*
- xi. *That the Athlete is reimbursed of any costs and expenses in connection with this appeal, including the CAS Court Office fee;*
- xii. *Order the IWF to pay the Athlete a contribution towards the costs she and/or her attorney eventually incurs with courier, and hearing expenses, in the minimum amount of CHF 3'500,00 (three thousand and five hundred Swiss francs).*

B. The Respondent

26. The IWF's submission, in essence, may be summarised as follows:

- (a) The Athlete bears the burden of proof to persuade the Panel that she did not intend to cheat.
- (b) Absent such proof the four-year period of ineligibility is mandatory.
- (c) The Athlete must first prove how the prohibited substance came to be present in her system. Absent such proof she cannot show that the ADRV was not intentional.
- (d) The Athlete has failed to provide such proof. Her purported explanation is unsupported by any evidence and is mere speculation.
- (e) An athlete bears personal responsibility for what she ingests or injects.
- (f) The Athlete has provided no evidence to corroborate her assertion that Vitamin B12 was prescribed by her doctor, nor did the coach elaborate on it and how it was purchased.
- (g) The Athlete has not established that she bore no (or no significant) fault for the ADRV.
- (h) It is not credible that the DCO, who spoke Portuguese, would address a Brazilian athlete in Spanish only.
- (i) In any event, even if (which is not the case) an interpreter was required, its absence could not cause the AAF.

27. The IWF submitted the following requests for relief:

- i. *The Appeal filed by the Athlete be dismissed;*
- ii. *The IWF is granted an award for costs.*

V. JURISDICTION

28. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

29. The Athlete relies on Article 13.2.1 of the IWF ADP as conferring jurisdiction on CAS. The jurisdiction of CAS is not contested by the IWF and is confirmed by the signature of the Order of Procedure.

VI. ADMISSIBILITY

30. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

31. As appears from above, the Athlete's statement of appeal was filed within 21 days of the Decision, as stipulated by Article 13.7.1 of the IWF ADP. Admissibility is not contested by the IWF.

VII. APPLICABLE LAW

32. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

33. The applicable regulations within the meaning of the above provision are the IWF ADP (Edition 2015) and the World Anti-Doping Code 2015 ("WADC"). Since the IWF that has issued the challenged decision is a Swiss Association domiciled in Switzerland, Swiss Law applies subsidiarily.

34. The following provisions of the IWF ADP are of particular relevance for the analysis of the dispute:

“ARTICLE 2 IWF ANTI-DOPING RULE 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 rule violation under Article 2.1.*

...

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;*

...

ARTICLE 3 PROOF OF DOPING

3.1 Burdens and Standards of Proof

IWF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether IWF has established an 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 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.

...

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

...

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 AAF.*

...

ARTICLE 4 THE PROHIBITED LIST

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.

...

ARTICLE 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.

...

ARTICLE 10 SANCTIONS ON INDIVIDUALS

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.

...

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:

10.2.1 The period of Ineligibility shall be four years where:

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

...

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

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.

...

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.

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

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

...

10.5.1.2 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.

...

10.6 Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault

10.6.1 Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations

10.6.1.1 IWF may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed in an individual case in which it has results management authority where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body which results in: (i) the Anti-Doping Organization discovering or bringing forward an anti-doping rule violation by another Person, or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to IWF.

...

ARTICLE 14 CONFIDENTIALITY AND REPORTING

14.3 Public Disclosure

...

14.3.2 No later than twenty days after it has been determined in a final appellate decision under Article 13.2.1 or 13.2.2, or such appeal has been waived, or a hearing in accordance with Article 8 has been waived, or the assertion of an anti-doping rule violation has not been timely challenged, IWF must Publicly Report the disposition of the matter, including the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved (if any), and the Consequences imposed. IWF must also Publicly Report within twenty days the results of final appeal decisions concerning anti-doping rule violations, including the information described above.

...

14.3.6 The mandatory Public Reporting required in Article 14.3.2 shall not be required where the Athlete or other Person who has been found to have committed an anti-doping rule violation is a Minor. Any optional Public Reporting in a case involving a Minor shall be proportionate to the facts and circumstances of the case”.

VIII. MERITS

35. In the Panel’s view the key – and ultimately dispositive – fact is that the Athlete’s A Sample tested positive for Boldenone, a prohibited substance and anabolic steroid.
36. In the case of the Athlete a complaint was made that the IWF Panel consolidated her case with that of Ms Gonçalves and gave a combined decision. This Panel can find no fault with that approach. The cases had a commonality in terms of the shared team membership of the pair, the occasion of their testing, the process of analysis of their A Samples and the results thereof and the general nature of their defences. Nonetheless the IWF Panel recognised that each case demanded individual attention: as has this Panel. It is clearly and rightly relevant to its conclusion in each case that precisely the same amount of the prohibited substance was detected in the two athletes’ A Samples.
37. The Athlete did not request a testing of the B Sample nor can she assert any breach of her fundamental rights when in the Notice of Charge she was offered the opportunity to make such

a request. Whatever may be the consequence of a case where there has been an actual denial to an athlete of such opportunity, the present case cannot be equated with it. The Panel finds it difficult to conceive of circumstances in which alleged procedural flaws or even denial of fundamental rights which could have no bearing on the findings of an ADRV would ever justify ignoring such findings.

38. The Panel sees no reason to doubt the evidence of the DCO that he spoke to the Appellant in Portuguese (in which he is sufficiently fluent). He had no reason not to do so; and no motive to mislead the Panel. In any event the absence of an interpreter could not undermine the results of the A Sample test.
39. The Panel rejects the Athlete's assertion that her request to be accompanied by her coach was denied by the DCO. The DCO would have had no motive for denying her request: and it appears on his own evidence that the Coach was occupied elsewhere at the time. There is no suggestion that the testing process was flawed. In any event his absence could not have affected the laboratory analysis.
40. The Athlete would not have participated in the Competition without parental consent and testing is an incident of such competitions, and her parents' consent could, even if necessary, have been implied. Notably there is no requirement under the relevant anti-doping rules that a parent be present for the sample collection of a minor, though parental consent may be required for a minor's membership in a federation or event. Moreover, the Athlete, although a minor, had previous experience of doping control. There is no suggestion that the testing process was flawed; and the absence of the Athlete's parent during that process could not have affected the laboratory analysis.
41. There is no absolute ban on disclosure even where the athlete found guilty of an ADRV is a minor. The default position is that disclosure should be made. Disclosure is inevitably damaging to the athlete: but the corollary is that it is also a deterrent to others. Given the legitimate concern about Brazilian doping cases, the CAS Panel sees no reason to fault the decision to make disclosure. In any event subsequent disclosure cannot undermine the previous finding of an ADRV.
42. It follows inexorably that subject to Article 10.6 of the IWF ADP unless the athlete can establish an absence of intention to commit an ADRV, the four-year period of ineligibility is mandatory (IWF ADP 10.2.1; 10.2.1.1; 10.2.3).
43. Even if, as was stated *obiter* in CAS 2016/A/4534 the WADC 2015 on which the IWF ADP was based can accommodate the "extremely rare" situation in which an athlete can establish lack of intention to commit an ADRV (or to cheat) without proof of how the prohibited substance came to be present in his or her system (see paragraphs 35-37) this is manifestly not such a situation.
44. In the case of Canadian Centre for Ethics in Sport and Canadian Weightlifting Federation Halterophile Canadienne v Taylor Findlay (SDRCC DT 16-0242w) where the issue was whether Ms Findlay intentionally ingested a prohibited substance – Clenbuterol – a very distinguished

CAS arbitrator Yves Fortier QC (sitting in the Sports Resolution Committee of Canada) said in his award of 13 March 2017 at para. 77:

“It appears to me that, logically, I cannot fathom nor rule on the intention of an athlete without having initially been provided with evidence as to how she had ingested the produce which, she says, contained the Clenbuterol. With respect to the contrary view, I fail to see how I can determine whether or not an athlete intended to cheat if I do not know how the substance entered her body”.

46. This Panel respectfully acknowledges the force of that analysis, and that the CAS jurisprudence hitherto expresses two distinct views on the issue. It repeats, however, that, for the purposes of the present appeal, it matters not which view ultimately prevails and that, only wholly exceptionally, could the distinction affect the outcome of a particular case.
47. The Athlete has failed to provide any cogent explanation of how the Boldenone came to be in her urine. Her theory (of contamination of a B12 Vitamin) is unsubstantiated by any evidence, be it from laboratory or literature; indeed, it is not even clear from her DCF that she was injected with any such vitamin. Her statement that *“It cannot be excluded the probability that a potential cross-contamination may have occurred”* inverts the requisite burden and standard of proof.
48. The Athlete’s clean record, the fact that she might have had good reason not to resort to a prohibited substance, the mere statement that she made every effort to check that she took only permissible medications, supplements and vitamins, cannot displace the conclusion, based on the impregnable laboratory results, that hers is neither a case of “non-significant fault”, nor a case where mitigating circumstances could apply under the applicable rules. In the Panel’s experience, praying in aid such factors is a common, but ineffective, forensic strategy.
49. Even were that conclusion not irresistible, the Appellant does not come within measurable distance of establishing a light degree of, let alone an absence of any, fault without far more detailed evidence than her mere say-so of what she did to avoid breach of the anti-doping rules.
50. The plea of substantial assistance, even if properly brought before CAS, would fail on the facts. The evidence relied on involving a coach of another team (which for obvious reasons CAS will not describe) is uncorroborated hearsay.
51. Finally, the adverse consequences suffered and to be suffered by the Athlete if the Appeal is not allowed is a plea for clemency not permissible within the IWF ADP and hence is unavailing. The proportionality of the sanction is well vouched for (see discussion in CAS 2016/A/4534 at paragraphs 50-54, which is fully shared by this Panel).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Ms Aline de Souza Facciolla Ferreira on 10 August 2016 against the decision issued by the Hearing Panel of the International Weightlifting Federation on 20 July 2016 is dismissed.
2. The decision issued by the Hearing Panel of the International Weightlifting Federation on 20 July 2016 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.