

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING YARELYS BARRIOS
BORN ON 12 JULY 1983, CUBA, ATHLETE, ATHLETICS**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8 and 9 thereof:

I. FACTS

1. Yarelys BARRIOS (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. From 15 to 18 August 2008, the Athlete competed in the discus throw event (Qualification and Final) in which she ranked 2nd and for which she was awarded the silver medal.
3. On 18 August 2008, on the occasion of the Final, the Athlete was requested to provide a urine sample for a doping control. The doping control was performed at the request of the IOC. The sample collected from the Athlete was identified with the number 1846105.
4. The A-Sample 1846105 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected upon the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne (“the **Laboratory**”) for long-term storage.
6. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods in order to possibly detect Prohibited Substances which could not be identified by the analysis performed at the time of the 2008 Olympic Games.
7. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
 - An initial analysis was to be conducted on the remains of the A-samples
 - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of a A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory the A-samples were not individually resealed nor transported in sealed containers.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the then applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. A similar cautious approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample in a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for such first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
15. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of the metabolites of a Prohibited Substance: acetazolamide (diuretic and masking agent).
16. On 18 May 2016, the Athlete through her NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample.
17. On 24 May 2016, the IOC received the completed PAAF Notification Appendix sent by the Athlete through her NOC in which she indicated that she would not attend the opening, splitting of the B-Sample, sealing of the B2-Sample and analysis of the B1-Sample personally and that she would be represented on this occasion by Enith Perez Retureta, Second Secretary of the Cuban Embassy in Switzerland.
18. On 26 May 2016, the IOC informed the Athlete, through her NOC, that the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample was scheduled to take place on 1 June 2016.
19. The opening, splitting of the B-Sample, the sealing of the B2-Sample occurred on 1 June 2016 followed by the analysis of the B1-Sample. The Athlete was represented on this occasion by Enith Perez Retureta.
20. As provided in the ISL, the opening and splitting was attended by an independent witness.
21. The results of the B1-Sample analysis were reported on 2 June 2016. They confirmed the presence of the metabolites of a Prohibited Substance, namely acetazolamide, a substance listed in the 2008 WADA Prohibited List under S5 Diuretics and other masking agents.
22. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with Art. 7.2.1 of the Rules.

23. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
24. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Juridical Commission;
 - Mrs Gunilla Lindberg (Sweden)
 - Mr Ugur Erdener (Turkey)
25. On 3 June 2016, the IOC through her NOC notified the Athlete of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of her right to request and attend the opening and analysis of the B2-Sample, either in person and/or through a representative. She was also informed of her right to request a copy of the laboratory documentation package.
26. On 7 June 2016, the IOC received the completed AAF Notification Appendix sent by the Athlete through her NOC in which she indicated that she did not accept the Adverse Analytical Finding and requested the opening and analysis of the B2-Sample. She informed the IOC that she would not attend personally the process and that she would be represented on this occasion by Mrs Yindra Gomez Sierra, Assistant of the Cuban Ambassador in Switzerland.
27. In her AAF Notification Appendix, the Athlete wrote the following comment:

"In my sport specialty, the consume of Acetazolamide would have been nonsense, because this product makes the organism weak. This product may masquerade other doping substances, but those substances have not been found in any of the Samples analysed. My play has always been clean!"
28. On 10 June 2016, the IOC informed the Athlete, through her NOC, that the opening and analysis of the B2-Sample was scheduled to take place on 14 June 2016.
29. The opening of the B2-Sample occurred on 14 June 2016 in the presence of an independent witness.
30. The Athlete did not personally attend the process but was represented by Mrs Yindra Gomez Sierra.
31. The results of the B2-Sample analysis were reported to the IOC on 15 June 2016. They confirmed the presence in the B2-Sample of the metabolites of a Prohibited Substance, namely acetazolamide.
32. On 20 June 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was invited to indicate whether she accepted the Adverse Analytical Finding and whether she requested a copy of the B2-Sample laboratory documentation package. She was also informed that she had the possibility to attend the hearing of the Disciplinary Commission and/or to submit a defence in writing.
33. On 23 June 2016, the IOC received the completed Disciplinary Commission Form sent by the Athlete through her NOC in which she indicated that she did not accept the B2-Sample Adverse Analytical Finding and requested a copy of the B2-Sample laboratory documentation package. She further indicated that she would attend personally the hearing

of the Disciplinary Commission and that she would be assisted by a member of the Cuban Embassy in Switzerland. She finally indicated that she would not submit a written defence.

34. On her Disciplinary Commission Form, the Athlete wrote again the following comment:
“In my sport specialty, the consume of Acetazolamide would have been nonsense, because this product makes the organism weak. This product may masquerade other doping substances, but those substances have not been found in any of the Samples analysed. My play has always been clean!”
35. On 1 July 2016, the Athlete was provided with a copy of the B1-Sample laboratory documentation package.
36. On 11 July 2016, the IOC informed the Athlete, through her NOC, that the hearing of the Disciplinary Commission was scheduled to take place on 18 July 2016 and was invited to confirm by 13 July 2016 that she would attend the hearing in person and/or through a representative. She was also offered the possibility to attend the hearing via videoconference. She was additionally invited to submit written observations by 16 July 2016. The Athlete was finally provided with a copy of the B2-Sample laboratory documentation package, as well as some additional documentation related to the handling of the sample in Beijing and its transfer to the WADA accredited laboratory in Lausanne.
37. On the same day, the NOC and the IF were invited to indicate whether they would send a representative to the hearing.
38. Neither the NOC nor the IF replied.
39. On 14 July 2016, the Athlete through her NF, confirmed that she would attend the hearing of the Disciplinary Commission accompanied by her lawyer, Mr Alfredo Armenteros. She also requested to postpone the hearing for at least 72 hours for logistical reasons.
40. On 15 July 2016, the IOC informed the Athlete, through her NOC, that the hearing of the Disciplinary Commission was postponed and rescheduled to take place on 21 July 2016 at 13:00 pm at the IOC Headquarters.
41. The Disciplinary Commission held a hearing on 21 July 2016 at the IOC Offices in Pully, Switzerland.
42. The Athlete attended the hearing in person and was assisted by Ms Marta Lazo, interpreter. The Athlete was represented by Mr Alfredo Armenteros, lawyer, and Ms Yindra Gomez, Embassy of Cuba in Switzerland.
43. The IOC was represented by Ms Tamara Soupiron, IOC Legal Counsel and Mr Jean-Pierre Morand and Mr Nicolas Français, attorneys-at-law.
44. Minutes of the hearing were taken by Mr Robert Elkins. The hearing was also recorded.
45. Neither the NOC of the Athlete nor the IF was represented at the hearing.
46. The Athlete explicitly agreed at the end of the hearing that due process had been fully observed in the course of the proceedings.

II. APPLICABLE RULES

47. Art. 2.1 of the Rules provides as follows:

“The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen.

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 bodily Specimens. 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 violation under Article 2.1.

2.1.2 Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation.

2.1.3 As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.”

48. Art. 2.2 of the Rules provides as follows:

“Use or Attempted Use of a Prohibited Substance or a Prohibited Method

2.2.1 The success or failure of the 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 rule violation to be committed.”

49. Art. 5.1 of the Rules provides as follows:

“The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.

The Period of the Olympic Games, or In-Competition Period, is defined as “the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.

All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.

The IOC shall have the right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases.”

50. Art. 7.3.3 of the Rules provides as follows:

“Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or the General Secretary of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC.”

51. Art. 8.1 of the Rules provides as follows:

“A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes.”

52. Art. 9.1 of the Rules provides as follows:

“An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete’s results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1.”

53. Art. 9.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation.”

54. Art. 9.3 of the Rules provides as follows:

“The management of anti-doping rule violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the Olympic Games, shall be managed by the relevant International Federation”.

III. DISCUSSION

55. The presence of a Prohibited Substance has been established in 2016 in the sample 1846105 that the Athlete provided on 18 August 2008, upon the occasion of the 2008 Olympic Games.
56. The substance detected in the Athlete’s sample is a diuretic and masking agent. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
57. The Disciplinary Commission is satisfied that the sample which has been re-analysed by the Laboratory is unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
58. At the hearing, the Athlete stated that she had not taken any medication or food supplements that could have caused the AAF. The Athlete confirmed that she had disclosed certain substances on the doping control form. These were: vitamins, minerals, amino-acids, Royal Jelly, ibuprofen (a painkiller) and methocarbamol (a painkiller and muscle relaxant). The Athlete confirmed to the Disciplinary Commission that the medications had been prescribed to her by a doctor.
59. In response to a question from counsel for the IOC, the Athlete confirmed that she had taken the list of medications and had had it checked to see whether any of the components corresponded to the substance which was found in her sample. The Athlete informed the Disciplinary Commission that a large team had worked on this issue; they had been looking for any relationship between the disclosed medications and the substance that had appeared in her urine but they could find no relation.

60. In response to a question from the Chair of the Disciplinary Commission, the Athlete confirmed that she was aware that diuretics were on the prohibited list as they could be used as masking agents for other substances. She told the Disciplinary Commission that, from the bottom of her heart, she had never consumed the prohibited substance or any other one that would involve her in such a shameful event as this disciplinary process.
61. In his submissions, counsel for the Athlete stated that the Athlete had always been faithful to the Olympic rules and had undergone more than 20 controls and tests during her career. Counsel noted that the first thing the Cuban Federation had done was to suspend the Athlete as soon as they had received the notification and because of the provisional suspension, the Athlete would not take part in the Olympic Games in Rio.
62. Based on the above, the Disciplinary Commission finds that the Athlete has committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in her body.
63. The Disciplinary Commission observes that at the hearing the Athlete sounded sincere in her allegation that she had never used any Prohibited Substance.
64. However, the Athlete effectively failed to bring forth any explanation at all for the presence of a Prohibited Substance in her bodily samples, nor any which would give an indication allowing to exclude that the substance was used for doping purposes (in this case masking purposes).
65. The substance at stake being a masking agent, it is in particular not relevant that no other, and in particular no “active”, Prohibited Substance was detected.
66. Further, the reference to the absence of positive effects on the performance in her sport discipline is also without relevance. Masking agents are not meant to be performance enhancing and they are not prohibited for this reason.
67. In the absence of any explanations for presence, the Disciplinary Commission can and must simply observe that the nature of the substance which was found in the Athlete’s sample makes its presence consistent with its use to mask another substance.
68. Finally and even if the question whether an anti-doping violation pursuant to Art. 2.2 of the Rules has been committed could be left open, an anti-doping violation is and remains in any event established pursuant to Art. 2.1, as was already shown above.
69. The consequences of an anti-doping rule violation under the Rules are specifically limited to consequences in connection with the 2008 Olympic Games. They are set forth in Art. 8 and 9 of the Rules and are the following.
70. In application of Art. 8.1, (results of the discus throw event) and respectively 9.1 of the Rules (for all other results), all the results achieved by the Athlete during the 2008 Olympic Games shall be annulled.
71. In application of Art. 9.3 of the Rules the further management of the consequences of the anti-doping rule violations and in particular the imposition of sanctions over and above those related to the Olympic Games 2008 shall be conducted by the International Association of Athletics Federations (“IAAF”).

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CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, Articles 2, 5.1, 7.3.3, 8 and 9 thereof.

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Yarelys BARRIOS:
 - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the discus event in which she placed 2nd upon the occasion of the Olympic Games Beijing 2008.
 - (iii) has the silver medal, the diploma, and the medallist pin obtained in the discus throw event withdrawn and is ordered to return same.
- II. The IAAF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The Comité Olímpico Cubano shall ensure full implementation of this decision.
- IV. The Comité Olímpico Cubano shall notably secure the return to the IOC, as soon as possible, of the medal, the medallist pin and the diploma awarded in connection with the discus throw event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 30 August 2016

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg