

DECISION of the FEI TRIBUNAL

dated 4 June 2021

in the matter of

Ms Nicole Walker – C20-0043

(FEI Case number: FEI 2019/HD03-Nicole Walker)

FEI Tribunal Hearing Panel:

Ms Valérie Horyna one-member panel

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FEI Tribunal Reference: C20-0043

Person Responsible/ID/NF: Nicole WALKER/10078137/CAN

Event/ID: Pan-Am Games-S - Lima (PER), 2019\_G-Pan-Am\_0001\_S\_S\_01

Date of Event: 06-09.08.2019

Prohibited Substance: Benzoyllecgonine (a metabolite of Cocaine)

Sample Code No.: 6381153

## I. Factual background

1. Ms. Nicole WALKER (FEI ID 10078137), the Athlete ("**the Athlete**"), is an International-Level athlete participating in the discipline of Jumping and registered with the Canadian Equestrian Federation (the "**CAN-NF**").
2. The Fédération Equestre Internationale ("**the FEI**" together with the Athlete, "**the Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
3. The Athlete participated at an International Event: the Pan-Am Games in Lima (PER), between 6 and 9 August 2019 (the "**Event**"). The Athlete is a member of the CAN-NF, which is a member of the FEI and therefore is bound by FEI's Anti-Doping Rules for Human Athletes (the "**ADRHA**"; based on the World Anti-Doping Code) which specifies the circumstances and conduct which constitute anti-doping rule violations.
4. Urine sample was collected from the Athlete on 7 August 2019 for in-competition testing under the ADRHA. The Urine sample was sent to the WADA approved Laboratory in Quebec, Canada (the "**Laboratory**") for analysis. The Athlete's sample had the reference number 6381153.
5. The Laboratory analysed the Athlete's sample and reported an adverse analytical finding of Benzoyllecgonine, a metabolite of cocaine, which is a Prohibited Substance. This finding was later on confirmed by way of the B Sample.
6. Cocaine is a non-Specified Substance and is listed in Class S6(a), Non-Specified Stimulants. The positive finding of Benzoyllecgonine, whose concentration in the A Sample was 400 ng/mL, in the Athlete's Sample gave rise to an Anti-Doping Rule Violation under Article 2.1 of the ADRHA.

## II. Panam Sports Proceedings

7. On 26 August 2019, the Panam Sports Organization (the "**Panam Sports**"), which is the governing body in charge of the Pan Am Games, officially notified the Athlete of the positive test result, and charged her with an Anti-Doping Rule Violation in application of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the applicable 2019 Panam Sports Anti-Doping Rules (the "**PADR**").

8. In accordance with Article 7.1.1 of the PADR, Panam Sports is the organisation responsible for conducting Results Management and the conduct of hearings for anti-doping rule violations arising under the PADR.
9. On 4 December 2019, a hearing took place in front of the Panam Sports Disciplinary Commission, which issued its decision on 11 December 2019. The Athlete was found to have committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the PADR, and her results at the Pan Am Games were disqualified. Furthermore, the Athlete's results related to Team Canada's score in the Jumping Team Competition were also disqualified and were replaced with the results of the next applicable Team Canada member.
10. The Athlete, as well as the CAN-NF, appealed the above decision to the Court of Arbitration for Sport (the "**CAS**") on 2 January 2020. Panam Sports cross-appealed the above decision on 13 March 2020. The FEI took part in the CAS proceedings as *Amici Curiae*. In the context of the CAS proceedings, various experts were heard, as to the source of the Metabolite detected in the Athlete's Sample.
11. On 12 January 2021, the CAS issued the Operative Part of the Award, where it dismissed the appeal filed by the Athlete and the CAN-NF, and partially upheld the cross-appeal filed by Panam Sports. The results for Team Canada in the jumping competition at the 2019 Pan Am Games were disqualified. The reasoned Award was issued on 22 April 2021.

### III. Initial Proceedings

12. In accordance with Article 7.1.2 of the PADR, *Responsibility for results management and the conduct of hearings for anti-doping rule violations arising under these Anti-Doping Rules in relation to Consequences that extend beyond Panam Sports' Event(s) (e.g., period of Ineligibility for other Events) shall be referred to the applicable International Federation.*
13. Thus, on 8 November 2019, the FEI Legal Department officially notified the Athlete and the CAN-NF, of a violation of Article 2.1 (The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the ADRHA based on the Laboratory's Adverse Analytical Finding of Benzoylecgonine in the Athlete's Sample collected at the Event and the potential consequences (the "**Notification Letter**").

14. The Notification Letter included notice that the Athlete was provisionally suspended as of 8 November 2019. The Athlete was further informed that she was offered the opportunity of a preliminary hearing with the FEI Tribunal, where she would be able to present all explanations necessary for the FEI Tribunal to assess whether the provisional suspension shall be lifted or maintained.
15. On 16 July 2020, the Athlete filed with the FEI Tribunal a request to lift the provisional suspension imposed on her by the FEI. Due to a leg injury requiring surgery which happened in the meantime, the Athlete later withdrew her request to lift the provisional suspension on 20 August 2020, since she would not be able to compete for a certain period of time.
16. On 16 September 2020, the Athlete renewed her initial request for the provisional suspension to be lifted, to which the FEI did not oppose, on 17 September 2020.
17. By way of a FEI Tribunal Decision dated 25 September 2020, the Provisional Suspension imposed on the Athlete was lifted as of 26 September 2020, midnight CET. This Decision became final as neither Party appealed it to CAS.

#### **IV. Further Proceedings**

18. On 27 April 2021, i.e. a few days after receiving the reasoned CAS Award, the FEI submitted its request to the Tribunal for the appointment of a hearing panel for the adjudication and approval of a Settlement Agreement, in accordance with Article 7.10.1 of the ADRHA.
19. On 6 May 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 10 May 2021.
20. On 6 May 2021, both the FEI and the Athlete informed the Tribunal that they did not have any objections to the constitution of the hearing panel.
21. Neither party requested an oral hearing.

V. Considering

A. Articles of the Statutes/Regulations which are, *inter alia*, applicable:

Statutes 24<sup>th</sup> edition, effective 19 November 2019 (“Statutes”), Arts. 1.5, 38 and 39.

General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 (“GRs”).

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 (“IRs”).

FEI Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 (“ADRHA”).

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 (“WADA Prohibited List”).

B. Person Responsible: Ms Nicole Walker.

C. Justification for sanction:

**GRs Art. 143.1:** “Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations).”

**ADRHA Scope:** “These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events. (...)”

**ADRHA Article 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 2.1.1”

**ADRHA Article 7.10.1:** “At any time during the results management process the Athlete or other Person against whom an anti-doping rule violation is asserted may

admit that violation at any time, waive a hearing and agree with the FEI on the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the FEI Tribunal, the final agreement shall state the full reasons for any period of Ineligibility agreed, including (if applicable), a justification for why the flexibility in Sanction was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 13.2.3 as provided in Article 14.2 and published as provided in Article 14.3.2.”

**ADRHA Article 10.2:** “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:

**Article 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.

**10.2.1.2** The anti-doping rule violation involves a Specified Substance and the FEI can establish that the anti-doping rule violation was intentional.

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

**Article 10.2.3** As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

**ADRHA Article 10.5:** "Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

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

**10.5.1.1** Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

**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.

**ADRHA Article 10.5.2** Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

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

**ADRHA Article 10.10** Financial Consequences

"Where an Athlete or other Person commits an anti-doping rule violation, the FEI Tribunal may, in its discretion and subject to the principle of proportionality, elect to a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed and/or b) fine the Athlete or other Person in an amount up to 15,000 CHF (fifteen thousand Swiss francs).

The imposition of a financial sanction or the FEI's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules or the Code.

In addition, for any anti-doping rule violation, some or all of sport related financial support or other sport-related benefits received by such Athlete or other Person may be withheld by the FEI and/or its National Federations."

**ADRHA Article 10.11** Commencement of Ineligibility Period

"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

**ADRHA Article 10.11.1** Delays Not Attributable to the Athlete or other Person

"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified."

**VI. The Parties' Submissions**

**A. The Submissions of the Athlete:**

22. Through the various exhibits submitted in the context of the proceedings related to the provisional suspension, as well as her submissions in the context of the CAS proceedings, the Athlete has explained the reason for the adverse analytical finding of Benzoyllecgonine, the metabolite of cocaine.
23. The Athlete explained that the positive finding of Benzoyllecgonine resulted from her ingestion of tea at the hotel where she stayed at the occasion of the Pan Am Games. She was not aware, at that time, that such tea – which was coca tea, but which she mistakenly took as green tea – contained cocaine. She further stated having never taken intentionally cocaine in her life, recreationally or otherwise. Although she did go out to dinner several times in Lima during the Pan Am Games, she never had any other beverages which could possibly contain cocaine. Furthermore, the Athlete



indicated having never committed any anti-doping violation in the past and was aware and did expect to be tested while being at the Pan Am Games. The Athlete relied on various factual, as well as expert evidence in support of her position.

24. In its Award dated 22 April 2021, after having carefully analysed all evidence and elements submitted, CAS ruled that the Athlete did not intentionally ingest cocaine at any relevant time on or prior to 7 August 2019. Furthermore, there was, in CAS's view, no unintentional ingestion of cocaine by Ms Walker at any relevant time prior to 7 August 2019. Therefore, CAS is of the opinion that the Adverse Analytical Finding *"was the result, and only the result of, the unintentional ingestion of cocaine by Ms Walker on the morning of 7 August 2019 as a result of her using a teabag containing cocaine which she took from the breakfast service areas of the Los Incas Lima Hotel"* (CAS 2020/A/6695, CAS 2020/A/6700, CAS 2020/A/7386, par. 289).

#### B. Written Response of the FEI:

25. On 27 April 2021, the FEI provided the Tribunal with the Settlement Agreement reached between the Parties, which consequently contained the FEI's position, which can be summarised as follows:
- (i) The Athlete has established the source of the cocaine.
  - (ii) The FEI has taken into account the expert evidence, which confirmed that the concentration of the Metabolite found in the Athlete's positive Sample could indeed have resulted from the consumption of coca tea during the Event.
  - (iii) The FEI further took into account the statement from the Hotel's manager where the Athlete stayed during the Panam Games, which confirmed that coca tea is offered to its guests.
  - (iv) The FEI also duly considered the Athlete's witness statement in this case.
  - (v) In view of the above, the FEI is satisfied that the Athlete established, on a balance of probabilities, how the prohibited substance entered her system, i.e. as a result of the consumption of coca tea.
  - (vi) With respect to the Athlete's level of Fault / Negligence, the FEI is of the opinion that Article 10.4 of the ADRHA cannot apply in casu, since the Athlete did consume a product without checking its ingredients. She was therefore

at fault, since it is her duty, as an Athlete, to check all products before consuming them. Thus, the “No Fault or Negligence” option of Article 10.4 ADRHA cannot apply in the present matter.

(vii) The FEI considers however that the Athlete demonstrated that she bore No Significant Fault or Negligence, based on Article 10.5.2 of the ARDHA. To reach this conclusion, the FEI noted that it was established that the presence of Benzoyllecgonine resulted from the consumption of coca tea, which was taken from the hotel’s breakfast buffet, tea which the Athlete mistakenly believed to be green tea.

(viii) Taking into account the entirety of the circumstances of the case, the FEI confirms that the Athlete has, on the balance of probabilities, established that she bears No Significant Fault or Negligence for her first anti-doping rule violation and the applicable ineligibility period shall be based on Article 10.5.2 of the ADRHA (Reduction of the Period of Ineligibility based on No Significant Fault or Negligence for Specified Substances).

26. In determining the proportionate sanction in this case, the FEI analysed the Athlete’s Fault based on various CAS jurisprudence, including recent cases involving the same prohibited substance.
27. The Athlete’s Fault should further be deemed as “light”, since the prohibited substance originated from a tea, not in a medicine or supplement where the risk of contamination with a prohibited substance is inherently more likely than in a common or garden drink, even considering the Peruvian context.
28. The FEI submitted that given the totality of the circumstances of the case in question, the FEI is of the opinion that the Athlete has established on the balance of probabilities that she bears No Significant Fault or Negligence for her first anti-doping rule violation. The Athlete’s level of Fault or Negligence shall be considered as “light” and it situates in the lower range of the applicable sanction. The FEI submitted that having considered all the latter facts as presented and set out in the Settlement Agreement, they are satisfied that the sanction of one (1) year of Ineligibility Period will be proportionate for this anti-doping rule violation.
29. As to the beginning of the Ineligibility Period, the FEI noted that the proceedings conducted against the Athlete have suffered significant delays, which were neither attributable to the Athlete nor the FEI. In particular, the current FEI proceedings had to be stayed pending the outcome of the separate proceedings – which themselves

were delayed due among others to the Covid-19 pandemic – in relation to the disqualification, which ultimately ended in the CAS Award rendered accordingly. Thus, and in application of Article 10.11.1 of the ADRHA, the FEI considers that the Period of Ineligibility shall commence back to 26 September 2019, i.e. as from the date of the Sample collection.

30. The FEI also noted that, pursuant to Article 10.10 of the ADRHA, the Athlete shall be required to pay a fine in the amount of CHF 1,500.
31. Finally, the FEI stated that the Athlete has to attend and complete an anti-doping education course such a, WADA's ALPHA or equivalent, or an education course provided by the Canadian Centre for Ethics in Sport and/or by Equestrian Canada. These education requirements must be fulfilled within one (1) year from the final decision of the FEI Tribunal and the completed certificate shall be sent to the FEI and to Equestrian Canada.

## VII. The Decision

### 32. Agreement between the Parties:

\*\*\*Quote\*\*\*

## 5. AGREEMENT BETWEEN THE PARTIES

- 5.1 All capitalised terms used in this Agreement but not defined within this document shall have the meaning ascribed to such terms in the ADRHA.
- 5.2 In the matter of the AAF related to the Sample the Parties agree, in accordance with ADRHA Article 7.10.1, that:
  - (a) The presence of the Metabolite in the Sample constitutes a violation of ADRHA Article 2.1. The Athlete is therefore found to have committed an ADRV.
  - (b) The Athlete established, on a balance of probabilities, how cocaine entered her system;
  - (c) **Ineligibility Period:**

The Parties agree that the prerequisites for the application of ADRHA Article 10.5.2 are fulfilled in the case at hand and that the applicable

period of Ineligibility shall be one year, commencing on 26 September 2019, ending on 26 September 2020, (the Provisional Suspension already served by the Athlete shall be credited against the imposed Ineligibility Period).

(d) **Disqualification of results:**

The Disqualification of results shall be as ordered in the CAS Award dated 12 January 2021 in CAS 2020/A/6695, 6700 and 7386.

(e) **Education Requirement:**

In addition, the Athlete has to either, follow and complete an anti-doping education course such as WADA's ALPHA or equivalent, or an education course provided by the Canadian Centre for Ethics in Sport and/or by Equestrian Canada. These education conditions need to be fulfilled within one year from the final decision of the FEI Tribunal. Once such course is completed the certificate shall be sent to the FEI and to Equestrian Canada.

(f) **Full settlement and resolution:**

This Agreement resolves and settles all outstanding matters between the Parties. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

(g) **Fine and Legal Costs:**

A fine of CHF 1500 shall be imposed on the Athlete. Each of the Parties shall bear their own legal costs.

(h) **Prior Violation:**

This violation of the ADRHA shall be considered a prior violation for the purpose of Article 10.7 (Multiple Violations) of the ADRHA.

(i) **Right of Appeal:**

This Agreement will constitute the decision for this case. Consequently, it will be communicated to the third parties with a right of appeal in accordance with ADRHA Article 13.2.3.

(j) **Public Disclosure:**

All final decisions of the FEI Tribunal are published on the FEI website.

\*\*\* End Quote\*\*\*

**VIII. Jurisdiction**

33. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ADRHA, as well as Article 18 of the IRs. The Athlete is a member of the Canadian Equestrian Federation, and as such is bound by the ADRHA. Article 7.10.1 of the ADRHA provides for agreements to be reached between parties. As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

**IX. Approval of Agreement**

34. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts – on a balance of probability – that the Athlete bears No Significant Fault or Negligence for her first anti-doping rule violation.
35. Furthermore, the Tribunal also takes note that the level of Fault or Negligence shall be considered as “light” and it situates in the lower range of the applicable sanction and the FEI are satisfied that the sanction of one (1) year of Ineligibility period will be proportionate for this anti-doping rule violation.
36. The Tribunal wishes to emphasise that it did neither evaluate whether the Athlete has met the burden of proof regarding the level of Fault or Negligence for this anti-doping rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
37. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the ADRHA Rules.
38. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case C20-0043 [2019/HD03] NICOLE WALKER.

## X. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the Athlete, Ms Nicole Walker concerning the case C20-0043 [2019/HD03] Nicole Walker is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Chapter VII above are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 13.2 of the ADRHA Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
3. This Decision shall be notified to the Athlete, via her legal representatives, to the President of the NF of the Athlete, to WADA, to the Canadian NADO and to the FEI.
4. This Decision shall be published in accordance with Article 14.3 of the ADRHA Rules.

FOR THE TRIBUNAL



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Ms Valérie Horyna, One-Member Panel