

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY, Claimant

and

ROBERT LEA, Respondent

AAA Case No. 01-15-0005-6647

A hearing was held on an expedited basis at the request of both parties in the above-entitled matter on November 19, 2015 at the American Arbitration Association office in Los Angeles, California before a Panel comprised of Jeffrey G. Benz, Esq., Mark Muedeking, Esq., and Daniel F. Brent, Esq., Chairman. Both parties attended this hearing, were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceedings. The record was declared closed upon receipt of the transcript on December 7, 2015. Pursuant to the request of the parties, the Panel issued an Interim Preliminary Award on November 21, 2015, and undertook to issue a fully reasoned award explaining in detail the Panel's rationale for its decision. At the request of the parties, and after further consultation with the parties by

telephone conference call, the Panel issued a Modified Interim Operative Award on December 13, 2015.

I. PARTIES

1. Robert Lea (hereafter, referred to as Respondent or the Athlete) was represented by:

Howard L. Jacobs, Esq.

2. Appellant USADA was represented by:

Matt Barnett, Esq. and

Jeff Cook, Esq.

3. Gary Johansen, Esq. and Sarah Clark, were present by telephone as observers for the United States Olympic Committee.

II. JURISDICTION

4. No party contested jurisdiction of the Panel at any time, and all parties affirmatively acknowledged the Panel's jurisdiction on the record at the arbitration hearing.

III. FACTUAL BACKGROUND

5. Respondent Robert Lea has achieved considerable international success as an elite cyclist, primarily in track cycling events. He also competes in road cycling events. Mr. Lea has represented the United States at two Olympic Games.

6. As an elite athlete, Mr. Lea has been educated about, and has complied with, the required regimen of in-competition and out-of-competition drug testing. He has acknowledged having participated in on-line education required annually by the International Cycling Union ("UCI"), the International Olympic Committee-recognized international federation for the sport of cycling, as a prerequisite to competing in sanctioned events.

7. On August 8, 2015, after competing at the USA Cycling Elite and Junior National Championships, Mr. Lea submitted a urine sample that tested positive for noroxycodone, a metabolite of oxycodone, a prohibited substance as categorized by the UCI Anti-Doping Rules (ADR) 2015 Prohibited List.

8. He was notified of this suspension on September 4, 2015. However, he competed from September 1 through 6, 2015 in the 2015 Pan-American Continental Track Championships.

9. Mr. Lea did not contest the validity of the test result or request a testing of the “B” sample and, on September 10, 2015, Mr. Lea accepted a provisional suspension and waived review by USADA’s Anti-Doping Review Board.

10. It was undisputed that the positive test result for oxycodone, a Specified Substance, was caused by Mr. Lea’s admitted ingestion of a single tablet of Percocet on the evening of August 7, 2015.

11. The Percocet had been prescribed to Mr. Lea by Dr. Neal Stansbury, an orthopedic surgeon located in Allentown, Pennsylvania, who had treated him for prior athletic injuries, specifically for road rash and bruises sustained in a crash during a race, and to ease his pain to enable him to sleep, particularly on long flights.

12. USADA sought to impose a four-year period of ineligibility on Mr. Lea, alleging that he had intentionally ingested a prohibited substance while in competition.

13. Mr. Lea, while admitting culpability for having ingested the substance, asserted that he was not in competition at the time of ingestion because the substance was ingested more than twelve hours before his next race; that the ingestion of a single Percocet in order to facilitate sleep did not create a competitive advantage or mask an injury, and thus was not taken for an

improper purpose; and that, therefore, the appropriate penalty should be a three-month suspension from competition, commencing on the date of the positive test, as he had immediately accepted his provisional suspension.

14. USADA denied this adjustment of penalty, and the matter was submitted for arbitration to the Panel, appointed in accordance with the procedures established by the United States Olympic Committee and administered by the American Arbitration Association.

IV. SUBMISSIONS OF THE PARTIES

15. At the hearing, the Parties submitted the following Stipulation of Uncontested Facts and Issues:

“The United States Anti-Doping Agency (“USADA”) and Robert Lea stipulate and agree for purposes of all proceedings involving USADA urine specimen number 1579501 as follows:

i. That the USADA Protocol for Olympic and Paralympic Movement Testing (“Protocol”) governs all proceedings involving USADA urine specimen 1579501;

ii. That the mandatory provisions of the World Anti-Doping Code (the “Code”) including, but not limited to, the definitions of doping, burdens of proof, Classes of Prohibited Substances and Prohibited Methods, sanctions, the Protocol, the International Cycling Union (“UCI”) Anti-Doping Rules and the

United States Olympic Committee (“USOC”) National Anti-Doping Policies are applicable to any matter involving the USADA urine specimen number 1579501;

iii. That USADA collected the urine sample designated as USADA urine specimen number 1579501 at the Elite and Junior Track National Championships on August 8, 2015;

iv. That USADA sent USADA urine specimen number 1579501 to the World Anti-Doping Agency (“WADA”) accredited laboratory in Los Angeles, California (the “Laboratory”) for analysis;

v. That USADA’s collection of the sample and the chain of custody for USADA urine specimen number 1579501 were conducted appropriately and without error;

vi. That the Laboratory’s chain of custody for USADA urine specimen number 1579501 was conducted appropriately and without error;

vii. That the Laboratory, through accepted scientific procedures and without error, determined that the A bottle of USADA urine specimen number 1579501 contained noroxycodone, which is metabolite of oxycodone, a Prohibited Substance in the class of narcotics, on the WADA Prohibited List, adopted by both the Protocol and the UCI Anti-Doping Rules;

viii. That Mr. Lea voluntarily and knowingly waived his right to have his B sample of urine specimen number 1579501 analyzed;

ix. That Mr. Lea did not challenge the Provisional Suspension imposed on September 10, 2015, barring him from competing in any competitions

under the jurisdiction of UCI, USA Cycling and the USOC, or any clubs, member associations or affiliates of these entities, until his case is deemed not be to a doping offense, he accepts a sanction, he fails to contest this matter, or a hearing has been held and a decision reached in this matter;

x. That so long as he does not participate in any competition or prohibited activity during his period of provisional suspension, the time served under the Provisional Suspension will be deducted from any period of ineligibility that Mr. Lea might receive beginning on September 10, 2015, the date the Provisional Suspension was imposed;

xi. That Mr. Lea understands that in accordance with Section 13 of the Protocol, he has the right to a review by a Panel of the independent Anti-Doping Review Board (the "Review Board") of his urine specimen number 1579501, and that he voluntarily and knowingly waives his right to a review of his case by the Review Board; and

xii. That, based on the foregoing, Mr. Lea acknowledges that he has committed his first anti-doping rule violation."

V. MERITS

16. Bobby Lea has enjoyed a long and distinguished career as a cyclist. His manifest achievements were extensively chronicled during the arbitration hearing.

17. Mr. Lea's demeanor during the arbitration hearing credibly supported his testimony that he is an athlete who takes very seriously his responsibilities to comply with his anti-doping obligations. Nevertheless, Mr. Lea admitted ingesting a single Percocet tablet on August 7, 2015 to fall asleep after a long day of competition that culminated in a medal award ceremony that ended late in the evening in order better to prepare for the next day's races.

18. He testified that he was sitting on the floor of his hotel room at approximately 11:00 p.m. on August 7, 2015, wearing a pressure brace to reduce swelling in his leg and using a computer to text friends, when he discovered immediately before he prepared to retire for the night that he had used his last Ambien pill, his customary sleep aid. In the same container, he found a single Percocet tablet that he had retained for emergency use should he be injured.

19. He further testified that, before he ingested the Percocet, he did not check with any reference resource to determine if Percocet, a well-known and widely used pain medication, contained any ingredients that were prohibited under the UCI ADR.

20. He also neglected to mention to testing officials when he was selected for post-race testing the next day that he had ingested the Percocet, and failed to disclose his ingestion on his doping control form.

21. Mr. Lea argued that he simply made an inadvertent and excusable error of failing to consult a website to check the contents of the Percocet tablet he had previously been provided by his physician before ingesting it as a sleep aid. As a result, he asserted that such a minimal omission should not result in an unduly harsh, and potentially career ending, impact on his career, compounded by additional adverse consequences for the United States and other United States athletes in qualifying for upcoming major international events.

22. USADA argued that Mr. Lea's failure to take even minimal steps to verify that a well-known, powerful pain medication contained no specified or prohibited substance before ingesting the Percocet during a multi-day competition precluded ignoring this omission, as to do so would seriously erode an essential premise upon which anti-doping enforcement to assure fair

competition is predicated: athletes are responsible for what enters their bodies and must take every reasonable precaution to avoid ingesting or otherwise using substances explicitly prohibited by the UCI ADR. According to USADA, having admitted his violation, Mr. Lea should be strictly liable for his conduct.

23. USADA asserted that:

“It is undisputed that Mr. Lea’s Sample, provided at the 2015 USA Cycling Elite & Junior Track National Championships, contained noroxycodone, a metabolite of oxycodone, and a Prohibited Substance in the class of narcotics on the WADA Prohibited List, adopted by both the USADA Protocol and the UCI ADR (as derived from the 2015 version of the World Anti Doping Code (“WADA Code”).

As a foundational principle, the UCI ADR place responsibility for every substance that enters an athlete’s body squarely upon the shoulders of the athlete. The UCI ADR acknowledge this strict liability duty:

‘It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.’

UCI ADR 2.2.1. Furthermore, the UCI ADR expressly state that

the 'presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed' is sufficient proof of an anti-doping rule violation. UCI ADR 2.1.2. Accordingly, the only issue before this Panel is to determine the appropriate sanction applicable to Respondent's anti-doping rule violation under the UCI ADR.

Respondent's period of ineligibility shall be four years when '[t]he anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.' UCI ADR 10.2.1.2. Because oxycodone is a Specified Substance, USADA has the burden of establishing to the comfortable satisfaction of the Panel that Respondent used the oxycodone intentionally. See UCI ADR 3.1. However, a rebuttable presumption will apply that the use of the Specified Substance was not intentional, if Respondent can prove that the Specified Substance was taken out-of-competition. See UCI ADR 10.2.3. Provided Respondent cannot produce evidence to persuade the panel that the Specified Substance was used out-of-competition, the burden shifts back to USADA to prove the violation was intentional."

24. The Panel must first analyze whether the threshold sanction for this case is four years, as put forth by USADA, or two years, as put forth by Mr. Lea. ADR 10.2 and ADR 10.2.1.2 provide that:

“The period of Ineligibility shall be four years where: ... The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was intentional.”

The operative factor for the Panel to determine is whether Mr. Lea intentionally ingested a prohibited substance.

25. According to UCI ADR 10.2.3, “The term ‘intentional’ is meant to identify those Riders who cheat.” Intentional is then specifically defined as “engag[ing] 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.”

26. Contrary to USADA’s assertion, the evidentiary record did not establish that Mr. Lea’s anti-doping violation was intentional as defined by ADR 10.2.

27. The Panel has concluded that Mr. Lea did not know that the Percocet contained oxycodone, that he did not intend to gain any competitive sporting advantage beyond sleeping well, and that he was not using a prohibited substance to mask an injury.

28. While Mr. Lea was negligent in not researching the constituent ingredients before he took the Percocet pill, the record does not support a conclusion that he intentionally violated the ADR by taking a medication that he knew contained a prohibited substance or ignored a known risk that taking the Percocet would create an anti-doping violation.

29. UCI ADR defines the “In-Competition Event Period” for the purpose of Prohibited List violations as “the period commencing twelve hours before a Competition in which the Rider is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition.” Mr. Lea established, based on the balance of probabilities, that he ingested the Percocet more than twelve hours before his next scheduled race, and thus was out of competition when the violation occurred. USADA has not demonstrated to the Panel’s comfortable satisfaction that Mr. Lea intended to violate an anti-doping rule. USADA has not satisfied its burden in overcoming the rebuttable presumption regarding out-of-competition ingestion. Therefore, the threshold four-year period of ineligibility sought by USADA cannot be sustained, and, pursuant to UCI ADR 10.2.3, the period of ineligibility must be reduced to not more than two years as the starting point for analyzing the appropriate sanction.

30. Well-recognized CAS jurisprudence mandates imposition of a substantial penalty, despite Mr. Lea’s purportedly benign intent, because many

of the established criteria that permit substantial reduction of penalty do not apply to the extent sought by Mr. Lea. These factors include: an athlete's youth and/or inexperience; language or environmental problems encountered by the athlete; the extent of anti-doping education received by the athlete; and any other 'personal impairments' such as those suffered by (i) an athlete who has taken a product over a long period of time without incident; (ii) an athlete who has previously checked the product's ingredients; (iii) an athlete suffering from a high degree of stress; or (iv) an athlete whose level of awareness has been reduced by a careless but understandable mistake."

31. Mr. Lea is not a novice competitor who was not fully educated about his responsibilities or the resources available for checking the status of Percocet. Nor was he unaware of the identity and nature of the product he was ingesting.

32. Because he intended to ingest a known pain reliever available only by prescription, he was obligated to check its ingredients against the Prohibited Substances list before ingesting the tablet.

33. Mr. Lea was not competing in a foreign country where he obtained a medication that was manufactured with different ingredients than in his home country, nor was there any language difficulty in dealing with local pharmacies or medical authorities. The product he ingested was not formulated differently

from his home country in a foreign environment or labeled in a manner than did not reveal the different formulation.

34. Moreover, Percocet is not a simple nutritional supplement or over-the-counter medication. The nature of the Percocet product, its availability only by prescription, and its common use as a painkiller unequivocally should have alerted Mr. Lea to check the component ingredients before ingesting the Percocet.

35. Although he testified that he used Percocet solely as a sleep aid, this use was not the primary purpose for which the medication had been prescribed. He was not treating a painful injury such as road rash or ameliorating aches and pains during a long flight, the purposes for which his treating physician testified that the Percocet had been prescribed months earlier.

36. Rather, Mr. Lea testified that he knowingly ingested the Percocet pill after discovering that he had no more Ambien, his customary sleep aid, and found a single leftover Percocet in the same pill container.

37. He admitted in his testimony that he didn't think to check out Percocet on the Globaldro.com or another similar website commonly used as a reference by athletes or against the Prohibited Substances list.

38. Accepting all of Respondent's testimony as true and accurate, he unequivocally failed to satisfy the requisite standard of care that governs his conduct as an experienced athlete.

39. Respondent was in the midst of a multi-day competition. He was negligent in taking the Percocet so close to the next competition, after which he could be subject to testing.

40. Moreover, he had been using his computer to text or e-mail only moments before, but did not take the time or make the effort to check quickly that the Percocet complied with the stringent guidelines governing competing athletes.

41. Respondent undoubtedly regrets his failure to consider Percocet as a medication that had to be screened for prohibited substances, especially because the essential purpose of an analgesic pain killer such as Percocet, which is available only by prescription, should have alerted an average layman, much less an experienced elite world-class athlete, to the possibility that its active ingredients included substances that could cause a positive test.

42. By his own acts, or failure to take any measures to protect himself, Mr. Lea deprived this Panel of any compelling basis for substantially reducing his sanction for ingestion of a known substance containing a specified or

prohibited ingredient to the extent requested by his counsel at the arbitration hearing.

43. Mr. Lea intended to ingest a pill he knew to be Percocet, an analgesic medicine whose primary therapeutic use is pain relief. This is the purpose for which his orthopedic surgeon had prescribed the Percocet many months earlier.

44. Respondent alleged that he was using Percocet for the purpose of inducing sleep so he could compete more efficiently the next day.

45. He did not follow what he credibly described as his customary meticulous routine of consulting the Globaldro.com or similar website to check for prohibited substances before ingesting any supplement product or medication.

46. These facts mandate the imposition of a penalty more stringent than the three or four-month suspension sought by Respondent.

47. Applicable case law, including the decisions of CAS in the Cilic (CAS 2013/A/3327) and UCI v Bascio (CAS 2012/A/2924) cases, does not contemplate reducing the penalty to the range of a lower category of offense without compelling evidence of an error by an elite athlete that could not have

been averted with reasonable effort or care or that explains how the prohibited substance was used in a manner in which the athlete was not culpable.

48. Under the Cilic standard of analysis, as well as under pre-Cilic decisions, Mr. Lea is culpable for “significant fault” for failing to check the ingredients of Percocet.

49. All Mr. Lea had to do before shutting off his computer and retiring for the night was to make a quick inquiry to determine if the ingredients of Percocet were appropriate for use during competition. While he undoubtedly experiences remorse on a daily basis for this oversight, the alternative penalty Mr. Lea seeks would seriously undermine the enforcement mechanism for discouraging intentional ingestion of a substance that reasonably should have alerted an athlete to investigate its ingredients. Such a low penalty cannot be justified on the basis of the cited jurisprudence.

50. The relevant jurisprudence, including Cilic and pre-Cilic decisions, provides opportunities for the Panel to mitigate a penalty to the extent sought by Respondent where factors beyond the Athlete’s reasonably foreseeable control have been persuasively established.

51. Paragraph 70 of Cilic provides guidance in formulating the length of sanction, providing that a “standard” level of significant fault justifies a twenty-month period of ineligibility within a sixteen to twenty-four month range.

The criterion for determining the period of ineligibility within this range is the Athlete’s subjective degree of fault.

52. Taking all of the objective evidence in the record into account, the Panel has determined that Mr. Lea’s level of fault was what the Cilic case designates as “significant fault”. Thus, the appropriate sanction for Mr. Lea is in the range of sixteen to twenty-four months.

53. Determining the appropriate period of ineligibility within the range of “significant fault” under Cilic requires weighing various subjective factors. The factors weighing in favor of a reduction for Mr. Lea are the absence of any discernible competitive advantage from ingesting the single Percocet, his possession of the Percocet pursuant to a valid prescription from his treating physician that had been taken over a long period of time without incident, and his prompt admission of a first anti-doping offense. By taking a previously prescribed Percocet without first checking its ingredients, Mr. Lea made a careless, but understandable mistake at the end of a long day of competition. He did not engage in conduct that he knew constituted an anti-doping violation. Moreover, this offense arose from out-of-competition ingestion.

54. The factors weighing against reduction of Mr. Lea's penalty are his knowledge that what he was ingesting was Percocet, the evident nature of Percocet as a therapeutic painkiller available only by prescription, his secondary use of the Percocet for other than its primary prescribed purpose, the minimal effort that would have been required to ascertain whether the Percocet contained any prohibited substances, and the use of the Percocet in the middle of a multi-day competition. Moreover, he neglected to mention to testing officials that he had ingested the Percocet when he was selected for post-race testing the next day, and failed to disclose his ingestion on his doping control form.

55. Mr. Lea, by his own actions and inactions, did very little to protect himself before ingesting Percocet, in the first instance, and to avoid the ramifications of his ingestion, in the second instance. By ingesting the Percocet, Mr. Lea engaged in conduct that he reasonably should have realized might result in an anti-doping violation. However, he did not intentionally commit an anti-doping violation, nor did he manifestly disregard a known risk in violation of Section 10.2.1.2 of the UCI ADR.

56. Furthermore, given the short-term effects of a single Percocet tablet, Mr. Lea's negligence did not create a sporting or competitive advantage.

57. The Panel finds no compelling basis to erode the legitimate basis for the applicable regulatory scheme by recognizing as simple “oversight” the ingestion of a prescription pain medication, especially other than for its prescribed use, without making even a minimal effort to check whether the medication contained a prohibited or specified substance. Nevertheless, the evidentiary record established several factors, discussed above, that have convinced the Panel to impose a sanction at the lower end of the sixteen to twenty-four month range for “significant fault” described in Cilic.

58. The Panel has concluded that, given the factors cited above, Mr. Lea’s negligent conduct involving ingestion of a single Percocet tablet while out of competition, his prior out of competition use of Percocet over a long period of time without a problem, and the fact that his level of awareness had been reduced by a careless but understandable mistake place him in the lower end of the “significant fault” range. Accordingly Mr. Lea should be penalized with a period of ineligibility of sixteen months.

59. As Mr. Lea waived testing of his “B” sample and executed his provisional suspension promptly, the appropriate start date for his period of ineligibility should be September 10, 2015, the date he accepted his provisional suspension. The Panel leaves intact all prior results save for the result for the day on which his positive sample was given, in accordance with the relevant provision of the UCI ADR.

VI. AWARD OF ARBITRATION PANEL

60. On the basis of the foregoing facts, legal analysis, and conclusions of fact, and having considered all of the evidence, testimony, and arguments submitted by the parties, this Panel renders the following decision:

- a. Robert Lea has committed his first anti-doping rule violation under Article 2.1 of the 2015 version of the International Cycling Union Anti-doping Rules UCI ADR and the WADA Code;
- b. The Panel determined that the applicable standards for establishing a violation under Article 10.2.1 have not been established to the Panel's comfortable satisfaction. Consequently, in accordance with Article 10.2.2 of the UCI ADR and the WADA Code, the period of ineligibility shall not exceed two (2) years;
- c. Robert Lea has sustained his burden of proof to qualify for a reduction in the length of his sanction. The Panel determines that the period of Ineligibility under the UCI ADR and WADA Code for Mr. Lea is sixteen (16) months, commencing from the date he accepted his provisional suspension, September 10, 2015, and continuing through January 9, 2017. As a result of this award, Mr. Lea's competitive results prior to September 10, 2015, except for his race results of August 8, 2015, shall remain intact;
- d. The parties shall bear their own attorneys' fees and costs associated with this arbitration;


- e. The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the arbitrators and the Panel, shall be borne entirely by USADA and the United States Olympic Committee;
- f. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied; and
- g. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

IT IS SO ORDERED, AWARDED, AND DETERMINED.

Dated: January 5, 2016
Princeton, New Jersey USA



Daniel F. Brent
Arbitrator and Chair



Jeffrey G. Benz
Arbitrator

/s/ *Mark Muedeking*

Mark Muedeking
Arbitrator