



CASE RESOLUTION WITHOUT A HEARING/FINAL DECISION

On August 5, 2023, Sample Collection Personnel collected a Post-Race urine Sample, designated as Sample #U100371327 from Mowins following Race 4 at Horseshoe Indianapolis in Shelbyville, Indiana. Mowins' A Sample was submitted to the HISA-accredited Industrial Laboratories in Denver, Colorado ("Industrial") for analysis. Industrial analyzed the A Sample in accordance with the Equine Standards for Laboratories and Accreditation and reported an Adverse Analytical Finding ("AAF") because it detected Metformin above the Limit of Detection. Metformin is a category S0 Banned Substance on the Prohibited List and Technical Document–Prohibited Substances.

Mr. Michael Lauer, as the Responsible Person for Mowins, was served an EAD Notice relating to the AAF on August 31, 2023. In that EAD Notice, he had until September 5, 2023 to request the analysis of the B Sample of Sample #U100371327, and until September 7, 2023 to provide HIWU a written explanation of the AAF. Pursuant to an announcement issued by HISA on July 28, 2023, Mr. Lauer's Provisional Suspension was postponed until either: (1) Mr. Lauer waived the B sample analysis; or (2) Mr. Lauer requested the B Sample analysis and the B Sample confirmed the AAF of the A Sample. Mr. Lauer requested the analysis of the B Sample, and the B Sample of Sample #U100371327 was sent to the UIC Analytical Forensic Testing Laboratory in Chicago, IL ("UIC Laboratory"). On October 9, 2023, the UIC Laboratory reported the presence of Metformin in the B Sample of Sample #U100371327.

On October 12, 2023, Mr. Lauer was served with the EAD Charge in connection with the matter, which included the imposition of the Provisional Suspension under ADMC Program Rule 3247(a)(1) of the Protocol. Mr. Lauer had until October 19, 2023 to request a hearing before an adjudicator from the Arbitral Body in accordance with ADMC Program Rule 3261 of the Protocol and Arbitration Procedures codified at Rule Series 7000. Mr. Lauer exercised his right to an arbitration hearing within the prescribed deadline.

On October 20, 2023, HIWU initiated an arbitration against Mr. Lauer with JAMS, the designated Arbitral Body. On October 25, 2023, JAMS commenced arbitration proceedings and appointed Mr. Jeffrey G. Benz, Esq., as the arbitrator. Pursuant to ADMC Program Rule 7290, a preliminary hearing was held virtually on October 27, 2023, before the sole arbitrator, during which a scheduling order was finalized. On November 6, 2023, by agreement of the parties, a new scheduling order was made.

As part of Mr. Lauer's submission, he provided documentation and other evidence relating to the source of Metformin. In April 2023, Ms. Danielle Dudley, an assistant trainer of Mr. Lauer, hired a groom named Jorge Ceballos to care for some of Mr. Lauer's horses located at Horseshoe Indianapolis, including Mowins. Unbeknownst to both Mr. Lauer and Ms. Dudley, Mr. Ceballos had a prescription for Metformin, which he needed to take twice daily. As required by Mr. Lauer, Ms. Dudley gave instructions to Mr. Ceballos upon becoming an employee regarding his personal hygiene and the precautionary measures and procedures that Mr. Lauer has established in his stables to avoid accidental contamination of any horse under his care with drugs or foreign substances.

On July 3, 2023, Mowins finished second in a race at Horseshoe Indianapolis racetrack where he was selected for Post-Race Testing, which came back negative for any Banned Substances. Mowins was set to race again about a month later, on August 5, 2023. That day, Mr. Ceballos took one of his Metformin tablets during lunch after finishing his morning duties. After taking his Metformin medication, Mr. Ceballos tended to Mowins and got him ready for the race, which included putting the bridle in Mowins' mouth.

Following a thorough examination of all the evidence presented by Mr. Lauer in his defense, HIWU agreed that Mr. Lauer was able to establish the source of Metformin by a balance of probability was unintentional contamination by Mr. Ceballos during his pre-race grooming preparations.

Based upon the facts set forth above, HIWU has determined that there is a violation of ADMC Program Rule 3212 due to the presence of Metformin in Sample #U100371327. As a result, the proposed Consequences must now be determined by HIWU.

Under ADMC Program Rule 3224, the elimination of the Period of Ineligibility for "No Fault or Negligence" is limited to "exceptional circumstances," and a Covered Horse's Sample including the presence of a human prescription drug due to contamination by an individual or individuals working with horses is not such an "exceptional circumstance."

Under ADMC Program Rule 3225(c), there can be a reduction of the Period of Ineligibility if there is No Significant Fault or Negligence on the part of the Covered Person. If it is established that the Covered Person bears No Significant Fault or Negligence for the Anti-Doping Rule Violation and that the Banned Substance in question came from a Contaminated Product or from another form of contamination, the period of Ineligibility can be, at a minimum, a reprimand and no period of Ineligibility, and, at a maximum, 2 years of Ineligibility, depending on the Covered Person's degree of Fault. Under ADMC Program Rule 3121(b), the standard of proof for the Covered Person shall be by a balance of probability (*i.e.*, a preponderance of the evidence).

Under ADMC Program Rule 1020, "No Significant Fault or Negligence" is defined as the Covered Person establishing that his or her fault or negligence, "when viewed in the totality of the circumstances . . . was not significant in relationship to the Anti-Doping Rule Violation." For any violation of Rule 3212, the Covered Person must also establish how the Prohibited Substance

entered the Covered Horse's system. Under Program Rule 1020, "*Fault* means any breach of duty or any lack of care appropriate to a particular situation. . . In assessing the Covered Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Covered Person's departure from the expected standard of behavior."

Under CAS 2013/A/3327 *Cilic v. International Tennis Federation*, there are both objective and subjective elements of Fault that should be considered in determining Consequences. The objective element describes what standard of care could have been expected from a reasonable person in the Covered Person's situation. The subjective element describes what could have been expected from that particular individual, in light of his personal capacities. The objective element is more important in making a determination as to the appropriate Consequences.

There are three ranges of objective fault: light or insignificant fault; moderate fault; and significant fault. In circumstances involving a Contaminated Product or other contamination, HIWU will consider the following ranges for periods of Ineligibility: light or insignificant fault—reprimand to 6 months; moderate fault—7 to 15 months; and significant fault—16 to 24 months. In addition, the number of months in the periods of Ineligibility in the ranges of fault can be decreased or increased by taking into account mitigating and/or aggravating circumstances.

In this matter, HIWU has determined that, based on the circumstances, Mr. Lauer has a light degree of Fault for the violation of ADMC Program Rule 3212. Under ADMC Program Rule 3040, it is the personal responsibility of each Covered Person to (i) be knowledgeable of and comply with the Protocol, and (ii) inform all personnel in any way with the care, treatment, training, or racing of his or her Covered Horses of their respective obligations under the Protocol. Under this Rule, Covered Persons are also required to adequately supervise all personnel involved in any way with the care, treatment, training, or racing of his or her Covered Horses, including by (i) clearly communicating that compliance with the Protocol is a condition of employment, (ii) creating and maintaining systems to ensure that such personnel comply with the Protocol, and (iii) adequately monitoring and overseeing the services provided by such personnel.

As to the objective element of Fault, Mr. Lauer fulfilled his personal responsibility to be knowledgeable of the ADMC Program and to inform all personnel associated with the care, treatment, training, or racing of his Covered Horses of their respective obligations under the Protocol. Mr. Lauer properly educated and instructed Ms. Dudley about necessary safeguarding measures he wanted implemented at his barns to minimize the chance drugs or foreign substances would enter his horses' systems, which Ms. Dudley followed. Because Mr. Lauer managed barns in two states simultaneously, he made a reasonable delegation of oversight responsibilities at Horseshoe Indianapolis to Ms. Dudley, while he remained in Churchill Downs Training Center, especially given her adherence to his safeguarding policies and commitment to providing instructions to all personnel working for her and around Mr. Lauer's horses about the necessary safeguards that Mr. Lauer required to have in place. Based on these objective factors, Mr. Lauer's degree of fault is in the light range.

As to the subjective element of Fault, the following mitigating factors are present in this

case which place Mr. Lauer's degree of fault at the low end of the light degree of fault range: (1) Ms. Dudley is a trusted, diligent assistant trainer who has worked for Mr. Lauer before without incident; (2) the AAF arose from inadvertent contamination (as opposed to intentional administration); (3) Mr. Lauer was not actually aware Mr. Ceballos was using Metformin; and (4) Mr. Ceballos had a current, valid and legal prescription for Metformin.

In light of these factors, Mr. Lauer's period of Ineligibility will be two and one-half months (i.e., 75 days). ADMC Program Rule 3223 requires the imposition of a fine when a violation of ADMC Program Rule 3212 has been established. HIWU believes, given his Admission and Acceptance of Consequences, that a fine of \$2,600.00 is appropriate in this case. In addition, pursuant to ADMC Program Rule 3221, there will be Disqualification of the results that Mowins obtained on August 5, 2023 and August 23, 2023, with resulting Consequences of Disqualification of results including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender (as applicable) to the Race Organizer, and Public Disclosure in accordance with ADMC Program Rule 3620.¹

THE HORSERACING INTEGRITY & WELFARE UNIT
December 15, 2023

¹ Mowins was also subject to a period of Ineligibility of 60 days, beginning on August 5, 2023, with reinstatement conditioned on a Negative Finding from a Re-Entry Test for all Banned Substances. Since a Negative Finding for Mowins' Re-Entry Test has already been reported, Mowins is currently eligible to race.