

# Doping Hearing Panel of the Badminton World Federation

## DOPING HEARING PANEL DECISION

Decision delivered on 11 February 2016

<b>Athlete:</b>	Ms. Xiaohan Yu, China
<b>Date of Hearing:</b>	Saturday 30 <sup>th</sup> January 2016
<b>Place of Hearing:</b>	Park Regis Hotel, Singapore
<b>The Doping Hearing Panel:</b>	Mr. Rune B. Hansen (Chair) Dr. P.S.M. Chandran Prof. Dr. Toni Graf-Baumann
<b>Athlete Representative:</b>	Lawyers Gong Xiaoyan, Ounju Lee, Interpreter Song Xiaohan
<b>Expert Witness:</b>	None called
<b>Anti-Doping Rule Violation:</b>	Violation in terms of Article 2.1 of the Badminton World Federation Anti-doping Regulations (BWF ADR, effective from January 1. 2015).

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### I - The Facts

1. On 12<sup>th</sup> July 2015, after the Women's Doubles Final Ms. Xiaohan Yu was selected for an in-competition doping control test at the 28<sup>th</sup> Summer Universiade held in Gwangju, Korea. She provided a urine sample which was collected by Korea Anti-Doping Agency (KADA). The sample was secured 23:59pm and sent for analysis (sample code 2981171) by the Doping Control Center of Korea Institute of Science and Technology (KIST)

2. In a lab result dated 16 July 2015 KIST reported presence of Sibutramine Metabolite di-Desmethyisibutramine in sample 2981171. Sibutramine is listed under class S6. Stimulants, as a Specified Substance prohibited in competition under the 2015 WADA Prohibited Substance List.
3. On 28 July 2015, Dr. Rink, Medical Committee Chair of Federation International Du Sport Universitaire (FISU) notified the Secretary General of Federation of University Sport of China (FUSC) of the positive result of the sample. The same day Ms. Yu was notified of the result from her badminton teacher, Zhihui Zhou at Beijing Sport University.
4. On 28 July 2015 Ms. Yu called Ms. Jie Cheng, the competition management department director at FUSC and told her that the only possibility for her to get Sibutramine in her system was the Exclusive Pill she had taken to regulate her menstruation.
5. On 31 July 2015, Ms. Cheng called the athlete to notify her that the 'Exclusive Pill' had been tested at China Anti-Doping Agency (CHINADA) and that the results showed Sibutramine detected in the pills.
6. On 03 August 2015, Zhihui Yang, Secretary General of FUSC wrote to FISU with a letter of explanation from the athlete. On the same date the athlete was suspended from all competition by the Chinese Badminton Association (CBA).
7. The Athlete has not competed since 24 July 2015.
8. In a letter of 18 September 2015, Dr. Rink of FISU requested FUSC to return two silver medals for mixed team and women's doubles events and notified that FISU would send the matter to the Badminton World Federation (BWF) for appropriate action.
9. On 28 September 2015, BWF sent a letter to Ms. Yu notifying her that she was provisionally suspended from competition and the possibility of sanctions as a result of an Adverse Analytical Finding (AAF). A similar letter was sent from BWF to the Secretary General of CBA.
10. On 18 November 2015, BWF sent a letter to Ms. Yu confirming the hearing date and re-confirmed the provisional suspension. The hearing had earlier been changed from 20 November 2015 due to the request from the athletes lawyer.

## II - THE APPLICABLE REGULATIONS

11. The Athlete was charged with a breach of **Regulation 2.1.2 of the BWF Anti-Doping Regulations (BWF ADR)**:

Regulation 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 Player's A Sample where the Player waives analysis of the B Sample and the B Sample is not analyzed; or where the Player's B Sample is analyzed and the analysis of the Player's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Player's A Sample; or where the Player's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle"*.

12. The Athlete notes that she does not contest the presence of the Prohibited Substance Sibutramine and admits to violation of Article 2.1.

13. **Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**

**Article 10.2.1 of the BWF ADR** states: *"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 Player 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 BWF can establish that the Anti-Doping Rule Violation was intentional"*.

14. The BWF Hearing Panel is convinced that the Anti-Doping Rule Violation was not intentional; therefore **Article 10.2.1** does not apply.

15. **Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

**Article 10.5.1 of the BWF ADR** states: *"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 Substance – Where the anti-doping rule violation involves a Specified Substance, and the Player 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 Player’s or other Person’s degree of Fault”.*

10.5.1.2 *“Contaminated Products – In cases where the Player 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 of Ineligibility, depending on the Player’s or other Person’s degree of Fault”.*

## 16. Burden and Standards of Proof

**Article 3.1 of the BWF ADR** reads:

*“BWF shall have the burden of establishing that an anti-doping regulation violation has occurred. The standard of proof shall be whether the BWF has established an anti-doping regulation 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 Regulations place the burden of proof upon the Player 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.”*

17. **The Court of Arbitration for Sport (CAS)** has established such jurisprudence regarding the athletes' burden of proof (Arbitration CAS 2011/A/2384):

*“[o]nce an adverse analytical finding has been established the burden of proof shifts to the athlete who has to establish on the balance of probabilities in order to escape sanction, or to obtain a reduction of the sanction, how the prohibited substance entered his system and that he in an individual case bears no fault or negligence, or no significant fault or negligence. For the Panel to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% change of it having occurred. The athlete thus needs to show that one specific way of ingestion is marginally more likely than not to have occurred.”*

18. Ms. Yu explained at the hearing that she accepts that Sibutramine was present in the Sample collected "in-competition" from her on 12<sup>th</sup> July 2015, and that she has consequently

committed an anti-doping rule violation under Article 2.1 of the BWF ADR. Her argument was that she had done so inadvertently and that no sanction should take place according to Regulation 10.4, or at least that a sanction should be reduced according to Article 10.5.1 of the BWF ADRs.

### III - The Panel's Deliberations and Conclusions

#### How did Sibutramine enter the body of Ms. Yu?

19. The panel emphasized Comment (a) Article 10.4 of the BWF ADR

**Article 10.4 of the BWF ADR** reads:

*"If a Player 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".*

**Article 10.4 – Comment (a) of the BWF ADR** reads:

*"A positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Players are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination".*

20. In this case, the Panel believes the positive test is without doubt due to a contaminated natural supplement (traditional Chinese medicine).

21. The Panel finds no valid reason why this case should not be treated as the example given in Article 10.4 (Comment 'a').

#### IV - Does the athlete bear no fault or negligence?

22. The defense has strongly argued that Ms. Yu was not at fault and was not negligent. The arguments of the defense are shortened and summarized in the following:

- The Athlete's youth or inexperience: Ms. Yu was (and still is) a student at the Beijing Sports University at the time of the doping control test. She had only been on the team for over three years.
- Language or environmental problems encountered by the athlete: Ms. Yu was at an event in a foreign country, Korea. Her coach and team doctor whom she should have been able to rely on for the problem she encountered did not attend the Summer Universiade.

- The extent of anti-doping education received by the athlete: Although the athlete received periodic anti-doping education by the team doctor, neither the doctor nor the coach educated or recommended a safe solution to manage her condition.
- Personal impairments:
  - Ms. Yu had taken Chinese herbal medicine since she was 7 years old and had never tested positive.
  - She checked the products ingredients.
  - The Athlete was suffering from high level of stress during the Summer Universiade. Since her last menstruation had been two weeks prior to the matches scheduled 10-12 July 2015, she was overwhelmed by the prospect of her condition preventing her from participation.
- As in other countries, it has become increasingly common and popular to purchase products online in China. It is not uncommon for consumers to purchase products through WeChat after contacting the seller and asking questions about the product. In the first three quarters of 2015, products which sales amount was over one Billion RMB was purchased through WeChat.

23. The defense believed, in view of the totality of the above circumstances and the subjective elements involved, Ms. Yu was not significantly at fault or negligent and should not be sanctioned for any period of ineligibility.

24. In the opinion of the Panel, despite the arguments of the defense, Ms. Yu has been negligent.

25. Ms. Yu felt uncomfortable contacting and possibly disturbing her team coach while they were also at a tournament in a different country.

26. The only alternative choice for Ms. Yu should have been not to take the 'Exclusive Pill'.

27. The panel does not believe sufficient diligence was shown by the Athlete by only contacting her mother and aunt, even though the Athlete's aunt had contacted the seller of the 'Exclusive Pill' and confirmed that it was safe for athletes to take.

28. Ms. Yu did also check the product on the internet and discovered a test report that concluded that the 'Exclusive Pill' was safe for athletes to take.

The Panel concludes that this is not enough to avoid negligence. An Athlete must never conclude that a product is safe based on an internet report.

29. The Panel concluded that by only not taking the 'Exclusive Pill' could Ms. Yu avoid being negligent.
30. The Panel emphasizes that this case is a classic example of the dangers of consuming any product that has not been thoroughly tested by a responsible pharmaceutical institution or medical professional.
31. In the Athlete's favour, it is the Panel's opinion that she did not take the pill to cheat or to gain a performance enhancing advantage.

#### **VI - Appropriate Sanction**

32. According to 10.5. the Player's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility. The operation of 10.5 gives the Panel a possibility to give a sanction between zero and 24 months.
33. Both objective and subjective elements must be taken into consideration when deciding the degree of negligence, cf CAS 2013/A/3327 M. Cilic vs ITF.
34. When carefully considering all elements of the case, it is the opinion of the Hearing Panel that Ms. Yu's degree of negligence is rather light.
35. It is the Panels opinion that a **period of ineligibility of 7 months** is the appropriate sanction in this case.
36. According to 10.11.3 any period of provisional suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility imposed.
37. The Hearing Panel finds that it is correct and fair to **backdate the period of ineligibility** to the date of sample collection **12<sup>th</sup> July 2015**.

38. Each party should bear its own costs in connection with the hearing.

**Conclusion**

1. **Ms. Xiaohan YU is sanctioned with a period of ineligibility of seven months, commencing on 12<sup>th</sup> July 2015.**
2. **Each party shall bear its own legal costs and other expenses incurred in connection with this Doping Panel Hearing.**

This done and signed this 11<sup>th</sup> day of February 2016



Rune B. Hansen (Chair)

On behalf of Panel members - Dr. P.S.M. Chandran and Prof. Dr. Toni Graf-Baumann.

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