Arbitration CAS 2022/ADD/43 Federation Internationale de Ski (FIS) v. Hossein Saveh Shemshaki, award of 5 January 2023

Panel: Judge Martina Spreitzer-Kropiunik (Austria), Sole Arbitrator

Skiing (alpine skiing)
Doping (dehydrochlormethyltestosterone)
Duty to establish how the prohibited substance entered the athlete's system

A mere and vague explanation of the manner in which the Adverse Analytical Finding may seem to have occurred is clearly not enough to discharge the athlete's burden of proof to the comfortable satisfaction of a CAS panel that a prohibited substance entered the athlete's system in a certain way beyond the athlete's control.

I. PARTIES

1. The Federation Internationale de Ski ("FIS" or the "Claimant") is the world governing body for skiing and snowboarding seated in Oberhofen, Switzerland.

2. Mr. Hossein Saveh Shemshaki (the "Athlete" or the "Respondent") is an Iranian national who was due to participate in the Men's Slalom at the Olympic Games Beijing 2022.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she only refers to the submissions and evidence he considers necessary to explain her reasoning.

4. On 7 February 2022, the Athlete underwent an Out-Of-Competition ("OOC") doping control under the Testing Authority (the "TA") and Results Management Authority (the "RMA") of the IOC (urine – sample no. A and B-7048493).

5. The Athlete declared on his Doping Control Form ("DCF") that he had used *"Booster shot, Beta alanine, HMB, I arginine, Amino bcaa, Ashwagandha, Ginseng, Co q 10, Vitamin d, Magnesium, Zinc"* in the seven days prior to his Doping Control. Mr Shemshaki also confirmed on his DCF that the

sample collection was undertaken in accordance with the relevant WADA International Standards.

6. On 9 February 2022, the WADA-accredited laboratory in Beijing, China (the "Beijing Laboratory") reported an Adverse Analytical Finding ("AAF") for the prohibited substance dehydrochlormethyl-testosterone metabolite 4α-chloro-18-nor-17β-hydroxymethyl,17α-methyl-5α-androst-13-en-3α-ol (LTM M3). Such substance is prohibited by WADA at all times and is classified as a non-specified substance under S1.1 Anabolic Androgenic Steroids of the 2022 WADA Prohibited List, known as "oral turinabol".

7. Upon inquiry by the International Testing Agency ("ITA"), the Beijing Laboratory confirmed the estimated concentration of the prohibited substance to be 0.006 ng/mL for the A-sample.

8. On 9 February 2022 at 09:00 pm Beijing time, the ITA (on behalf of IOC) notified the Athlete of the AAF and imposed a mandatory Provisional Suspension pursuant to Art. 7.6.1 of the IOC ADR with immediate effect (the "AAF Notification").

9. Through the AAF Notification, the Athlete was informed of the potential consequences of the AAF and his procedural rights, including the right to request the B-sample counter-analysis, a provisional hearing, or an expedited final hearing. The Athlete was requested to confirm to the ITA on or before 11:00 am Beijing time on 10 February 2022 whether he requested a provisional hearing to challenge the imposition of the Provisional Suspension.

10. In a communication to ITA, the Iranian NOC immediately confirmed that the Athlete had been notified of the AAF.

11. On 9 February 2022 at 11:19 pm Beijing time, the Athlete confirmed to the ITA that he requested the opening and analysis of the B-sample and that he would stay in the village until results.

12. On 10 February 2022 at around 00:30 am Beijing time, the Athlete provided his explanations stating *"I didn't use any prohibited thing drug or food. I have gave doping test first of January during qualification race in Iran and that test sent to wada and results was negative. If you check my skill and point it is clearly visible that I have no chance to be in top results as I participated in 2010 and 2014 Olympic winter games and my goal is just participating in Olympic and there is no reason for me to use any illegal drug and food"*.

13. The Athlete did not request a Provisional Hearing on the limited issue of the Provisional Suspension within the set deadline and was deemed to have waived his right to challenge the Provisional Suspension as per Art. 7.6.3 IOC ADR.

14. On 11 February 2022, the B-Sample was opened in the presence of the Athlete and was analysed by the Laboratory. On the same day, the Laboratory reported that the sample B-7048493 had also returned an AAF for the prohibited steroid dehydrochlormethyl-testosterone metabolite 4α-chloro-18-nor-17β-hydroxymethyl,17α-methyl-5α-androst-13-en-3α-ol (LTM M3).

15. Upon inquiry by the ITA, the Laboratory confirmed the estimated concentration of the prohibited substance to be 0.01 ng/mL for the B-sample.

16. On 12 February 2022, the ITA asserted an Anti-Doping Rule Violation against the Athlete under Art. 2.1 of the IOC Anti-Doping Rules.

17. On the same day, the Athlete informed the ITA that he requested the case to be referred to the CAS Anti-Doping Division Olympic Games Beijing 2022 to rule on the present matter.

18. On 13 February 2022, at 11:04 am Beijing time, pursuant to Article 11 of the CAS Anti- Doping Division Arbitration Rules for the Olympic Winter Games Beijing 2022, the President of the Anti-Doping Division confirmed the appointment of Ms Martina Spreitzer-Kropiunik, Judge in Vienna, Austria, as the Sole Arbitrator to resolve the matter.

19. On 14 February 2022 at 05:00 pm Beijing time, the Sole Arbitrator, assisted by the CAS ADD Managing Counsel, started the hearing. The Athlete, represented by its Beijing Pro Bono Counsel, as well as ITA, represented by its Head of Legal Affairs and Legal Counsel, and FIS, represented by its Integrity Manager and Legal Counsel, NOC, represented by its Deputy Chef de Mission, and the WADA Independent Observer participated at the hearing.

20. On 14 February 2022 at 06:57 pm Beijing time, the Athlete submitted a written statement via email during the hearing.

21. At the conclusion of the hearing, the Athlete agreed that he had received a full and fair opportunity to be heard in this proceeding despite the limited time available for him to prepare for such hearing.

22. On 15 February 2022, the CAS ADD delivered a Partial Award containing the following order:

    1. *Mr Hossein Saveh Shemshaki is found to have committed an anti-doping rule violation pursuant to Art. 2.1 of the IOC Anti-Doping Rules applicable to the Games of the XXIV Olympiad Beijing 2022.*

    2. *Mr Hossein Saveh Shemshaki is declared ineligible to compete in all competitions in which he has not yet participated at the Olympic Games Beijing 2022.*

    3. *Mr Hossein Saveh Shemshaki is excluded from the Olympic Games Beijing 2022 and his accreditation for the Olympic Games Beijing is withdrawn.*

    4. *Mr Hossein Saveh Shemshaki is ordered to leave the Olympic Village within the next 24 hours from the notification of the present Partial Arbitral Award.*

    5. *With the issuance of this Partial Arbitral Award, the IOC's participation in this proceeding is hereby terminated.*

    6. *All other prayers or motions for relief are dismissed.*

23. As no appeal has been raised, the award became final and binding.

III. PROCEEDINGS BEFORE THE CAS ADD POST-GAMES

24. In para. 61 of said award, the Sole Arbitrator stated that these proceedings shall continue by and between FIS, who joined these proceedings as Co-Applicant, and the Athlete, in regard to the consequences of the ADRV which may be imposed on the Athlete. The Sole Arbitrator, after consultation with the Parties, shall determine the procedural directions applicable to the remaining part of the arbitration and shall issue, at the conclusion of these proceedings following the Olympic Games, a final award, all in accordance with Art. 20 of the CAS ADD Rules.

25. On 8 March 2022, the CAS ADD invited the FIS to briefly state its preliminary request for relief.

26. On 17 March 2022, the Claimant filed its preliminary requests for relief before CAS seeking to have the Athlete declared ineligible from participating in any FIS-sanctioned event or other activity for a period of 4 years and an order that the Athlete reimburses the claimant its legal fees and other expenses related to the proceedings.

27. On 5 April 2022, the Athlete sent an email to FIS applying for hearing; such email was then forwarded to the CAS ADD on 7 April 2022.

28. On 7 April 2022, the CAS ADD informed both parties that the Athlete did not file his written submissions within the granted deadline, i.e. by 6 April 2022. The claimant was invited to file its brief supporting its relief sought and the grounds, evidence and authorities supporting such relief by 27 April 2022, and to state whether it would prefer that a hearing be held.

29. On 14 April 2022, the Athlete sent a (delayed) response email to the Claimant stating *inter alia* that he did not request for a TUE and that he has always participated in clean sport. The Athlete also attached documents in support of his response on the AAF.

30. On 18 May 2022, the Claimant filed its brief, stating that the Athlete had not yet filed any submissions for his case. The Claimant was of the view that there was no need for a hearing.

31. On 20 May 2022, the CAS ADD informed both Parties that the Athlete is granted a deadline until 25 May 2022 to explain the reasons why he considers that a hearing is necessary.

32. On 2 August 2022, and in the absence of an answer from the Athlete regarding the holding of a hearing, the CAS ADD informed both Parties that the Sole Arbitrator considers herself to be sufficiently well informed to decide this matter without the need to hold a hearing. In addition, the Order of Procedure has been attached for signing by 8 August 2022.

33. On 4 August 2022, the Claimant submitted the signed Order of Procedure.

34. On 8 August 2022, the Athlete sent an email to CAS ADD requesting for an extension of the time limit to sign the Order of Procedure.

35. On 9 August 2022, the CAS ADD granted an extension until 12 August 2022.

36. On 15 August 2022, the CAS ADD informed both Parties that the Athlete has not returned a signed copy of the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

A. The Claimant

37. The FIS's submissions, essentially, may be summarized as follows:

- The Athlete has not provided a reasonable explanation, let alone evidence, for the adverse analytical finding ("AAF").

- The FIS is of the view that no hearing is necessary to be held in the present case.

- As the Athlete has not appealed the Partial Award, it became final and binding not only for the Athlete, but also for the FIS and the CAS itself, except with respect to the sanction where the FIS or the CAS ADD, respectively, were called to complement the Partial Award by a sanction outside of the Olympic Games.

- For this reason alone, the honourable Sole Arbitrator is bound by the results of the evidentiary proceedings and the finding of the ADRV in the Partial Award.

- The binding effect of the Partial Award results also from the fundamental legal principle of *res judicata*. The present proceeding deals with exactly the same facts and the same rules with the only difference that the Partial Award dealt with the sanction applicable only to the Olympic Games, while the CAS ADD determines the sanction applicable in the period outside of the Olympic Games. The current proceeding is not a different proceeding as the one before the CAS ADD at the Olympic Games 2022, it is rather a continuation.

- The Athlete did not appeal with the assessment of the facts in the partial award, and his email of 14 April 2022 did not dispute the facts disputed in the Partial Award. The Athlete confirmed several times at the hearing before the CAS ADD during the Olympic Games 2022 that he did not contend the laboratory results.

- Dehydrochlormethyl-testosterone is prohibited by WADA at all times and is classified as a non-specified substance under S1.1 Anabolic Androgenic Steroids of the WADA 2022 Prohibited List. Therefore, the standard period of ineligibility for a violation of Article 2.1 FS ADR shall be four (4) years unless the Athlete can establish that he did not act intentionally.

- The Athlete argues that he has been tested negative for his whole life. This argument is not convincing at all. The fact that an Athlete has never been tested positive before, has never been accepted by the CAS as either lack of intent or lack of fault.

- Even if the Athlete submitted evidence for his injury and the "disagreement" with the previous president of his national ski federation, he did not demonstrate clear facts, which make it probable that the prohibited substance must have entered the system in a certain way beyond the Athlete's control.

- He provided evidence that he was treated with a PRP (Platelet-Rich Plasma) injection, however, this does not explain the positive doping findings for Dehydrochlormethyl testosterone.

- It remains the responsibility of the Athlete to ensure that no prohibited substances enter their bodies and that, in case of a competition break, any prohibited substances taken during that period have been degraded in the meantime or that a TUE has allowed the lawful ingestion. However, in the case at hand, there is neither a TUE nor has the Athlete alleged that he had taken prohibited substances during the competition break.

- The Athlete explains that he wanted to *"say goodbye to the professional world of skiing with a reasonable and worthy result, and leave it. A good and happy memory for my compatriots and to say goodbye to the professional world of competitions in my heart"* after the change of the president of the national ski federation and that it would make no sense to use prohibited substances as he did not have a chance to achieve a top result. However, failing to provide specific evidence leaves the Sole Arbitrator with the Athlete's own declaration, which is not sufficient to prove the absence of intent.

- In his e-mail of 14 April 2022, the Athlete did not provide any credible explanation of how the prohibited substance has entered his system. During the hearing before the CAS ADD at the Olympic Games 2022, the Athlete speculated about the possibility that his food or drinks could have been contaminated and that such a contamination could have caused the AAF.

- As the Athlete is not able to establish to the necessary standard how the prohibited substance entered his system, there is no room to eliminate or reduce the standard sanction based on Articles 10.5 or 10.6 FIS ADR.

38. In its written submissions, the FIS requested for the following reliefs:

On behalf of the Claimant, the undersigned respectfully requests the honorable sole arbitrator:

1. *To declare Hossein Saveh Shemshaki ineligible from participating in any FIS-sanctioned event or other activity for a period of four (4) years starting from the date of the final decision for having committed an Anti-Doping Rule Violation contrary to Art. 2.1 of the FIS Anti-Doping Rules;*

2. *To order the Hossein Saveh Shemshaki to reimburse the legal fees of the Federation Internationale de Ski and other expenses related to the present arbitration.*

B. The Athlete

39. The Athlete did not file any submissions before CAS ADD, instead sent an email to the Claimant on 14 April 2022 stating the following:

- The Athlete has been participating in various competitions and tournaments and throughout his doping tests have always been negative.
- Following WADA rules, the amount of unauthorized dose that affects performance of the Athlete to participate in competitions is 0.4ng/ml and the presence of six thousandths of a nanogram per milligram (0.006 ng/ml) in his analysis according to the rule of fairness and logically is not a significant amount for the impact on his performance in competitions.
- The Athlete stated that he was injured in December 2018, which injury lasted until December 2019 and would get a PRP injection every three months on his injured ankle. As such, he did not participate in any competitions to avoid aggravating the injury.
- As evidence, the Athlete submitted an English translation of a medical certificate from the attending physician, Dr. Mohsen Movahedi Yeganeh, MD.
- The Athlete stated that he had disagreements with the previous president of Ski Federation of his country and was therefore not able to take part in competitions and therefore applied to be a coach instead.
- As evidence, the Athlete submitted an English translation of a letter to the Director for Teheran Ski Board and a reply letter in this matter.
- The Athlete stated that as soon as the previous president of the Ski Federation resigned from his position, his desire for competition arose and entered professional competitions again.
- The Athlete stated that he did not fill a TUE form and requested for a re-testing of the B Sample.
- The Athlete stated that his only motivation was to say goodbye and leave a good memory to his land, people of his country and family.

The Athlete thus concluded by requesting CAS ADD to pay attention to his petition by examining and analysing the issues based on the rules of justice and fairness.

V. JURISDICTION

40. The Introduction to the IOC ADR, specifically regarding its Scope, expressly states that the IOC ADR apply *"in relation to the Olympic Games Beijing 2022"* and *"to all Anti-Doping Activities and Doping Controls over which IOC has jurisdiction in relation to the Olympic Games Beijing 2022". Among other, the IOC ADR apply to "all Athletes entered in the Olympic Games Beijing 2022" and "Athletes*

entered in the Olympic Games Beijing 2022 … are bound by these Rules as a condition of eligibility to participate".

41. Article 8.1.1 of the IOC ADR provides that *"[w]here the ITA decides to assert an anti-doping rule violation […], the ITA shall promptly file an application with the CAS Anti-Doping Division, acting as first-instance authority to conduct proceedings and to issue decisions, as per the CAS Anti-Doping Division Arbitration Rules […]"*.

42. Article 1 of the Arbitration Rules applicable to the CAS Anti-Doping Division Olympic Games Beijing 2022 provides that *"[t]he CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned"*.

43. Furthermore, Article A2 of the ADD Rules provides as follows:

CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a sports entity, by contract or by specific agreement.

These Rules apply only to the resolution by first instance arbitration of alleged anti-doping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Art. nor against any decision rendered by CAS ADD.

Decisions rendered by CAS ADD shall be applied and recognized in accordance with the WADC.

CAS ADD shall also have jurisdiction in case of alleged doping violations linked with any re-analysis of samples.

44. The Parties confirmed that the ADD has jurisdiction over the present matter.

45. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

46. The IOC ADR applicable to the Games of the XXIV Olympiad Beijing 2022 applies, without limitation, to all anti-doping activities and Doping Controls conducted during the Olympiad Beijing 2022.

47. No party has objected to the application of the IOC ADR.

48. Article A20 of the ADD Rules provides as follows:

The Panel shall decide the dispute in in accordance with the WADC and with the applicable ADR or with the laws of a particular jurisdiction chosen by agreement of the Parties or, in the absence of such a choice, according to Swiss law.

49. Article A2 of the ADD Rules provides as follows:

CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

50. Article 8.1.1 FIS Doping Rules 2021 (the "FIS ADR") provides as follows:

FIS has delegated its Art. 8 responsibilities (first instance hearings, waiver of hearings and decisions) to the CAS ADD.

51. Article 8.1.2.1. FIS ADR provides as follows:

When FIS sends a notice to an Athlete or other Person notifying them of a potential anti-doping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Art. 8.3.1 or Art. 8.3.2, then the case shall be referred to the CAS ADD for hearing and adjudication, which shall be conducted in accordance with the principles described in Art.s 8 and 9 of the International Standard for Results Management.

52. The Sole Arbitrator therefore confirms that the IOC ADR and the FIS ADR in conjunction with the WADC as provided for in the IOC ADR, applies to this procedure.

VII. MERITS

a. The Anti-doping Rule Violation

53. The Sole Arbitrator has already ruled that the Athlete committed an ADRV in accordance with Article 2.1 of the IOC ADR in his Partial Award on Anti-Doping Rule Violation rendered on 15 February 2022. This also constitutes an ADRV pursuant to Article 2.1 FIS ADR and Article 2.1 of the WADC.

b. (No) hearing

54. On 14 February 2022 the Athlete agreed that he had received a full and fair opportunity to be heard in Beijing (see Para 21).

55. The Athlete did not file any submissions before CAS ADD, only sent an email to the Claimant on 14 April 2022, which did not contain any valuable new documents or arguments that would have made a new hearing necessary.

56. Article A19.3 of the ADD Rules provides as follows:

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing.

57. The Sole Arbitrator deemed herself to be sufficiently well informed and therefore decided not to hold a hearing related to the specific issue of the consequences of the ADRV beyond Olympic level.

c. Determining the Sanction

58. Dehydrochlormethyl-testosterone is prohibited by WADA at all times and is classified as a non-specified substance under S1.1 Anabolic Androgenic Steroids of the WADA 2022 Prohibited List.

59. Article 2.2.1 of WADC provides that *"[i]t is each Athlete's personal duty to ensure that no prohibited substance enters his or her body and that no prohibited method is used",* whereas it is not required, to establish an ADRV, *"intent, fault, negligence or knowing use on the Athlete's part"* to be demonstrated.

60. Articles 2.2. FIS ADR and 10.2.1.2 WADC state that the period of ineligibility shall be (4) four years where the Anti-Doping Organization can establish that the violation was intentional.

61. Article 10.4 FIS ADR counts aggravating circumstances, which may increase the period of ineligibility.

62. Article 10.5 FIS ADR states that the otherwise applicable period of ineligibility shall be eliminated, if an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence.

63. Article 10.6 FIS ADR counts particular circumstances for reduction of the period of ineligibility based on No Significant Fault or Negligence.

d. Aggravating Circumstances

64. As stated above, Article 10.4 FIS ADR counts aggravating circumstances, which may increase the period of ineligibility.

65. FIS did not establish that aggravating circumstances are present, in contrary, FIS records indicates, that this is the Athlete's first ADRV.

66. Therefore, the circumstances of this case do not warrant the application of aggravating circumstances.

e. No Fault or Negligence

67. Article 10.5 FIS ADR and Article 10.4 of the WADC state that:

"[i]f an Athlete 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".

68. "No Fault or Negligence" is defined in the WADC as:

"The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system".

69. For no fault, an athlete must exercise *"utmost caution"*, i.e. he or she must take every conceivable effort that no prohibited substance enters his/her body.

70. On 10 February 2022 at around 00:30 am Beijing time, the Athlete provided his explanations stating:

"I didn't use any prohibited thing drug or food. I have gave doping test first of January during qualification race in Iran and that test sent to wada and results was negative. If you check my skill and point it is clearly visible that I have no chance to be in top results as I participated in 2010 and 2014 Olympic winter games and my goal is just participating in Olympic and there is no reason for me to use any illegal drug and food".

71. On 14 February 2022, during the partial hearing, the Athlete stated in particular, that he did not use any prohibited drug or food, that he has underwent a doping test on 5 January 2022 during qualification race in Iran and the result was negative. The Athlete further claims that, according to his skills, it is clearly visible that he has no chance to be in top results as he participated in 2010 and 2014 Olympic Winter Games and his goal is just participating in OG and there is no reason for him to use any illegal drug and food. He also heard from a third person that people are trying to make his doping test positive and shows a video containing an interview of another Iranian elite sport-skier who wonders aloud how well the Athlete is performing. The interpreter present at the hearing simultaneously translated this video.

72. In his email of 14 April 2022 to the Claimant, the Athlete stated in particular, he has been participating in various competitions and tournaments and throughout his doping tests have always been negative, that he was injured in December 2018, which injury lasted until December 2019 and would get a PRP injection every three months on his injured ankle and that he had disagreements with the previous president of the Ski Federation of his country and was therefore not able to take part in competitions and therefore applied to be a coach instead.

73. However, the Athlete's argument did not satisfy his burden of proof to the satisfactory of the Sole Arbitrator that the prohibited substance entered his system in a certain way beyond the Athlete's control. His submissions were a mere and vague explanation of the manner in which the AAF may have seemed to have occurred and not how the presence of the AAF may have

been a plausible result of No Fault of his own. Therefore, the Athlete has not provided any concrete evidence/clear facts that neither the supplements, nor food or beverage he consumed during a stay in a training camp prior to the Olympic Games Beijing 2022 would have contained the prohibited substance found by the laboratory.

74. Additionally, the expert opinion produced during the partial hearing on 14 February 2022 provided that possible contamination with food supplements can be ruled out.

75. The documents submitted by the Athlete do not provide any further information on this matter either.

76. Having thoroughly considered the evidence, the Sole Arbitrator concludes that the circumstances of this case do not warrant the application of No Fault or Negligence.

f. No Significant Fault or Negligence

77. Article 10.6.1 FIS ADR and Art. 10.5.1.1 of the WADC state that:

"Specified Substances: where an anti-doping rule violation involves a Specified Substance and the player or other person can establish No Significant Fault or Negligence, 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".

78. To benefit from such reduction of the period of ineligibility, the Athlete must establish that there was no Significant Fault or Negligence when he committed the ADRV. "No Significant Fault or Negligence" is defined in the WADC as follows:

"The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system".

79. In accordance with the definition and in order to benefit from a reduction of the period of ineligibility based on No Significant Fault or Negligence, the Athlete needs to establish how the Prohibited Substance entered his system.

80. Again, as already stated at paragraph 73, the Athlete's argument did not satisfy his burden of proof to the satisfactory of the Sole Arbitrator that the prohibited substance entered his system in a certain way beyond the Athlete's control.

81. Having thoroughly considered the evidence, the Sole Arbitrator concludes that the circumstances of this case do not warrant the application of No Significant Fault or Negligence.

g. Reduction of the period of ineligibility

82. As Art 10.5 FIS ADR (No Fault) and 10.6.1 FIS ADR (No Significant Fault) do not apply, there is no reason and justification to deviate from the standard sanction of four (4) years of ineligibility.

h. Applicable Sanction

83. Article 2.2. FIS ADR and Article 10.2.1.2 WADC state that the period of ineligibility shall be (4) four years when established that the violation was intentional.

84. The Claimant has sufficiently proven the absence of No Fault or Negligence by the Athlete. The Athlete did not provide any reasonable explanation as to the presence of the prohibited substance in his system and, therefore, is not eligible to benefit from any reduction of the above-mentioned sanction.

i. Commencement of the period of ineligibility

85. Article 10.13 of the FIS ADR provides as follows:

Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, 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.

86. In its written submissions, FIS requests that credit shall be given to the provisional suspension imposed on the Athlete on 15 March 2022 and that, therefore, the four-year period of ineligibility shall start from such date.

87. However, on 9 February 2022 at 09:00 pm Beijing time, a provisional suspension was imposed on the Athlete. This provisional suspension – which was not challenged by the Athlete – shall apply to the period of the Olympic Games Beijing 2022 and beyond such period as FIS agreed to become a Co-Claimant in these proceedings. As a matter of fact, the aim of inviting the relevant International Federation of the athlete involved in an anti-doping procedure is precisely to extend the provisional suspension, if any, beyond the period of the Olympic Games, so the International Federation would avoid to start an internal process specifically dealing with such issue.

88. Furthermore, there is no elements on record that the Athlete would have participated in any official competitions between the end of the Olympic Games and the provisional suspension imposed by FIS on 15 March 2022.

89. Based on the understanding that the Athlete was effectively suspended from 9 February 2022, the Athlete will be credited for the total period of suspension served from 9 February 2022 to the date of this Award on Sanction.

VIII. COSTS

(…).

IX. RIGHT TO APPEAL

93. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq*. of the CAS Code of Sports-Related Arbitration, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration Anti-Doping Division rules that:

1. The application of the Fédération Internationale de Ski is granted and therefore:

   a. Mr. Hossein Saveh Shemshaki is sanctioned with a period of ineligibility of four (4) years.

   b. Mr. Hossein Saveh Shemshaki is credited the period of provisional suspension already served as from 9 February 2022 and through the date of this Award on Sanction.

2. The present Award is rendered free of charge.

3. (…).

4. All other or further motions or prayers for relief are dismissed.