Arbitration CAS 2022/ADD/53 International Weightlifting Federation (IWF) v. Vicky Annett Schlittig, award of 2 August 2023

Panel: Mr David Benck (USA), Sole Arbitrator

Weightlifting
Doping (DHCMT)
CAS ADD jurisdiction
Burden and standard of proof
No fault

1. **Article 8.1.1 of the IWF Anti-Doping Rules (ADR) indicates that the IWF has delegated its responsibilities related to the adjudication of anti-doping matters to CAS ADD. Consequently, the CAS Sole Arbitrator has jurisdiction to adjudicate matters concerning the assertion of Anti-Doping Rule Violations (ADRVs).**

2. **Once an ADRV has been established by the IWF, the burden of proof then shifts to the athlete to prove either that the ADRV should not be considered as such, or that the ADRV was unintentional or that the applicable period of ineligibility should be reduced, suspended, or eliminated on the grounds provided for in the IWF ADR. The athletes' burden of proof is on a balance of probability. When it comes to laboratory analysis, Article 3.2.2 of the IWF ADR makes it clear that WADA-accredited laboratories are presumed to have conducted sample analysis in accordance with the International Standard for Laboratories (ISL) and it is for the athlete to rebut such presumption by establishing first that a departure from the ISL occurred and second, that such deviation could reasonably have caused an Adverse Analytical Finding (AAF).**

3. **If, based upon the consensus of expert witnesses, the prior and subsequent negative tests and the low/trace amounts of DHCMT, in combination with the testimony and evidence as to the numerous contacts that occurred during the few days before the ADRV, it is probable that the athlete was subjected to inadvertent, transdermal administration of DHCMT that was not intentional, the athlete thus bears no fault.**

I. PARTIES

1. The International Weightlifting Federation ("IWF") is the world governing body for the sport of weightlifting. As a signatory of the World Anti-Doping Code ("the Code") the IWF has enacted the IWF Anti-Doping Rules ("IWF ADR"). In furtherance of its obligations, the IWF has delegated the implementation of the IWF Anti-Doping programme to the International

Testing Agency (the "ITA"). Such delegation includes the Results Management and subsequent prosecution of Anti-Doping Rule Violations ("ADRVs") under the jurisdiction of the IWF.

2. By virtue of this delegation, and on behalf of the IWF, the ITA filed this request to the Anti-Doping Division of the Court of Arbitration for Sport ("CAS ADD") for adjudication.

3. Vicky Annett Schlittig (the Athlete, or Ms. Schlittig) is an elite weightlifter from Germany and is born on 10 April 2003 and is considered as an International-level Athlete within the meaning of the IWF ADR and is a member of Bundesverband Deutscher Gewichtheber e.V.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in these proceedings. Additional facts and allegations found in the Parties' written briefs and evidence may be set out, where relevant, in connection with the consideration of the merits that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in the Award only to the submissions and evidence he considers necessary to explain his reasoning as it relates to the Award.

5. As a 20-year-old weightlifting athlete from Germany who has been competing in international weightlifting events since 2019, Ms. Schlittig is aware of her Anti-Doping obligations stemming from the IWF ADR and has been subject to 27-28 prior sample collections both by the National Anti-Doping Agency of Germany and the IWF since 2017, all of which had been negative.

6. Further, Ms. Schlittig has been in the Registered Testing Pool ("RTP") since 2017 including at the time of the circumstances giving rise to this matter.

7. Ms. Schlittig claims that she has always obtained information about the foods and dietary supplements she takes. Her dietary supplements all appear on the Cologne List, which means that they are checked for possible contamination with banned doping substances and are marked as harmless by the German National Anti-Doping Agency.

8. On 26 September 2021, Ms. Schlittig participated in the 2021 IWF European Junior Championships held in Rovaniemi, Finland (the "Competition").

9. On that date, at approximately 20:08, she was notified that she was selected for an In-Competition doping control. In her first attempt at 20:59, Ms. Schlittig only provided 10 ml of urine, which was recorded with the number 286811. In the second attempt at 21:28, Ms. Schlittig provided 60 ml of urine, which was entered into the system with the number 289155. Finally, Ms. Schlittig was able to provide the required amount of urine in a third attempt at 21:51. Ms. Schlittig provided three partial samples to reach the required amount of 140 ml urine. Between these attempts, Ms. Schlittig left her previously provided doping sample with the officials without exercising any control or supervision over the samples themselves.

10. The A and B-samples were transferred for analysis to the WADA-accredited laboratory in Cologne, Germany (the "Cologne Laboratory").

11. On 4 November 2021, the Cologne Laboratory reported an Adverse Analytical Finding ("AAF") for the prohibited steroid dehydrochloromethyl-testosterone ("DHCMT") in sample no. A-0054019. Such substance is always prohibited and is classified as a non-specified substance under "S1. Anabolic Androgenic Steroid" ("AAS") of the 2021 WADA Prohibited List.

12. Upon inquiry, the Cologne Laboratory informed the ITA that the roughly estimated concentration of DHCMT in sample A-0054019 was about 0.6 ng/mL.

13. The "Appendix A-B Sample Arrangements and Athletic Rights Form" document did not mention Ms. Schlittig by name, but instead listed a different athlete whose name is not being disclosed in this Award. Notwithstanding, the ITA found that, based on the review of the documentation, that there was no departure from the International Standard for Testing and Investigations ("ISTI") or the International Standard for Laboratories ("ISL") that could undermine the validity of the AAF.

14. On 22 November 2022, the ITA notified Ms. Schlittig of the AAF and imposed a mandatory Provisional Suspension pursuant to Article 7.4.1 of the IWF ADR with immediate effect.

15. Through the AAF notification, Ms. Schlittig was informed of: (i) the potential consequences of the AAF, (ii) her procedural rights, including the right to request the B-sample counter-analysis, a Provisional Hearing or an expedited final hearing and (iii) the right to admit to the ADRV and/or provide Substantial Assistance. Lastly, Ms. Schlittig was invited to provide explanations as to the circumstances that led to the Presence of the Prohibited Substance in her sample.

16. On 29 November 2021, Ms. Schlittig responded to the AAF Notification. Through this communication, she (i) stated that she challenged the AAF and (ii) requested the opening and analysis of her sample B-0054019 as well as the Laboratory Documentation Package ("LDP") for her sample A-0054019.

17. Ms. Schlittig alleged specifically that there had been a *"mix up of samples"* owing to the incorrect name on an annexure document sent with the AAF notification and accordingly requested DNA Analysis to *"detect an obvious sample mix-up"*.

18. On 8 December 2021, the ITA responded and claimed that the erroneous name in the annexure document (i.e., the B-Sample Arrangements and Athlete Rights Form) was an inadvertent clerical mistake and argued that it was abundantly clear from several contemporaneous documents including the DCF, the laboratory test report, and the AAF Notification that sample no. 0054019 was indeed provided by Ms. Schlittig.

19. This apparent error on the part of the ITA was never adequately clarified and ITA failed to explain how the name of a different athlete could have found its way into the protocols intended for Ms. Schlittig.

20. As such, Ms. Schlittig made a justified and reasonable request for a DNA analysis to confirm that the samples were in fact hers.

21. Also in its response to the First Challenge, ITA advised Ms. Schlittig that pursuant to her request, the B-sample opening and analysis would be conducted on 14 December 2021 at 10 am at the Cologne Laboratory.

22. On 14 December 2021, sample B-0054019 was opened at the Cologne Laboratory. Ms. Schlittig and her representative were personally present at the Cologne Laboratory to witness the opening of the B-sample.

23. On 15 December 2021, Ms. Schlittig confirmed that she wanted to proceed with conducting the DNA analysis to confirm that the samples were her samples.

24. On the same date, the Cologne Laboratory reported an AAF for DHCMT in sample B-0054019, thereby confirming the A-sample analytical result. Upon inquiry, the Cologne Laboratory informed the ITA that the roughly estimated concentration of DHCMT in sample B-0054019 was about 0.6 ng/mL., like the A-sample.

25. On 17 December 2021, the ITA acknowledged Ms. Schlittig's request for DNA analysis and provided her with the cost for analysis.

26. On 20 December 2021, the ITA informed Ms. Schlittig that based on the confirmed presence of DHCMT in sample B-0054019 and as per Article 2.1.2 of the IWF ADR, the ITA was asserting that she had committed an ADRV ("Notice of Charge") under Article 2.1 of the IWF ADR for the Presence of a Prohibited Substance.

27. On 28 December 2021, Ms. Schlittig (i) requested the B-sample LDP, (ii) again requested the DNA analysis and (iii) requested the suspension of the deadline to provide explanations until the results of the DNA analysis were available.

28. On 10 January 2022, the ITA provided Ms. Schlittig with the LDP for sample B-0054019.

29. On 12 January 2022, blood serum sample no. 938279 and urine sample no.7040813 were collected in an unannounced out of competition test and sent for analysis to the Cologne Laboratory to be compared with the anti-doping sample provided on 26 September 2021.

30. On 3 February 2022, the Cologne Laboratory issued a DNA report (DNA Report). The DNA Report concluded that the results of the analyses were consistent and that the urine sample 7040813 and the serum sample 938279 came from an identical originator, indicating that the probability of the evidence is 123 trillion times more likely that the DNA profile on sample

0054019 came from the identical originator of samples 7040813 and 938279 than if it came from an unknown unrelated individual to the originator of samples 7040813 and 938279.

31. Ms. Schlittig thus conceded the reliability of the DNA Report, and thus, the authenticity of the samples was not disputed at the hearing.

32. On 4 March 2022, Ms. Schlittig inquired whether the A and B sample LDPs were *"complete"*. Ms. Schlittig specifically noted that the LDPs did not include the presence of any metabolites and asked the ITA to provide this information, if available.

33. On the same date, the ITA informed Ms. Schlittig that the LDPs contained all the information that WADA-accredited laboratories were required to provide as per WADA Technical Document for Laboratory Documentation Packages. It is worth noting that the WADA-accredited laboratory was apparently not required to provide all information per the WADA Technical Document for LDPs.

34. On 21 March 2022, Ms. Schlittig provided her explanations on the circumstances that led to the Presence of the Prohibited Substance in her sample ("Explanations") based upon the information that had been provided to her at that time.

35. Having accepted the DNA Report, Ms. Schlittig confirmed that there was *"no doubt that the urine of the A- and B-samples originates from Ms. Schlittig"*. Further, she stated that a possible explanation for the presence of DHCMT in her sample was *"[a] doping attack on Ms. Schlittig"* or *"a third party may have subsequently infected both the A- and B-samples with DHCMT from the outside or already manipulated the experimental setup on the day of the doping test on 26 September 2021"*.

36. Ms. Schlittig argued that both the A-sample documentation and the B-sample documentation, which tabulate analytical results, only refer to the concentration of DHCMT of 0.6 ng/ml, and that there was a lack of any short-term and long-term metabolites ("LTM"). The ITA's laboratory documentation, dated 9 December 2021 (sample A 0054019) and 6 January 2022 (sample B 0054019), indicated the presence of DHCMT only. Based on the lack of metabolites, Ms. Schlittig assumed that DHCMT was present in pure form that had not been processed by her body and argued that the presence of DHCMT in pure form, i.e., in non-glucoronidated form, could not be explained by toxicology other than through the manipulation of the doping sample.

37. More specifically, Ms. Schlittig argued that the fact that only the parent compound of DHCMT had been detected in the *"pure culture"* and the absence of the so-called LTMs of DHCMT indicated that Ms. Schlittig did not biologically metabolize DHCMT through her body. Ms. Schlittig also provided an expert report of Dr Douwe de Boer in support of her explanations ("First de Boer Report").

38. Upon receipt of the Explanation, the ITA requested the Cologne Laboratory to confirm whether any metabolite of DHCMT was discovered during the analytical processing of the samples.

39. On the same date, the Cologne Laboratory confirmed that the roughly estimated concentration of approximately 0.6 ng/mL, was exclusively detected after enzymatic hydrolysis with ß-glucuronidase, and that DHCMT was not present in detectable amounts in the *"free fraction"*.

40. The ITA argued that these results supported the conclusion of the presence of the phase-II metabolite DHCMT-glucuronide in the urine sample 0054019. This information was not shared with Ms. Schlittig for nearly four months.

41. On 13 July 2022, the ITA informed Ms. Schlittig that the Cologne Laboratory's conclusion had unequivocally confirmed the presence of phase-II metabolite DHCMT-glucuronide in her urine sample 0054019. The ITA took the position that DHCMT had indeed metabolized in her body and therefore the theory that *"a third party may have subsequently infected the A-and B-samples with DHCMT from outside"*, simply did not hold true.

42. The ITA further informed Ms. Schlittig that after review of the entire case file, the ITA considered that she had not been able to satisfy her burden of proof as to identify the source of the Prohibited Substance in her sample.

43. Ms. Schlittig's theory that she could have been the victim of having her samples contaminated was ultimately ruled out, after the ITA provided the additional information on 13 July 2022, and after Dr. de Boer agreed that possible contamination of the sample from the outside could be ruled out.

44. On 8 August 2022, Ms. Schlittig responded to the ITA's communication of 13 July 2022 ("Supplemental Explanation"). In summary, she argued that the absence of the usual metabolites of DHCMT (such as LTM - M1, M2 and M3), proved that DHCMT was not administered orally, but that transdermal application was the *"likely scenario"*. She argued that physical skin contact with other athletes, coaches and support staff likely resulted in her AAF and that this *"contact"* may have occurred (i) on the flight to the Competition on 23 September 2021, and/or (ii) on the bus to the hotel, and/or (iii) during mealtime, training, or weigh-ins, and/or (iv) on the day of the Competition.

45. She also argued that the 0.6 ng/mL low concentration of the DHCMT parent compound, in addition to the negative anti-doping tests on 6 September 2021 (twenty days before the AAF) and on 4 October 2021 (eight days after the AAF), proved *"unconscious transdermal application"* establishing a lack of intent.

46. In support of her Supplemental Explanation, Ms. Schlittig submitted a second expert report by Dr Douwe de Boer ("Second de Boer Report") as well as a scientific research article on the detection of steroids in urine after transdermal application.

47. On 11 October 2022, the ITA informed her that it had reviewed the case file including the Supplemental Explanation and supporting documents, but that it was the ITA's opinion that there were no grounds to lift the mandatory Provisional Suspension imposed, and that the ITA

would forthwith refer the entire matter for adjudication to the CAS ADD as CAS ADD was the body vested with the jurisdiction to hear and adjudicate the question of whether or not the mandatory Provisional Suspension imposed as per Article 7.4.1. of the IWF ADR should be lifted or maintained, as well as the merits of the entire case.

48. On 7 November 2022, Ms. Schlittig requested that the CAS ADD proceedings be initiated.

49. Consequently, based on the above and pursuant to Article 8.1.1 of the IWF ADR, the ITA referred the present proceedings to the CAS ADD for a determination of the applicable and appropriate Consequences for Ms. Schlittig's alleged ADRV.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

50. On 15 November 2022, the IWF filed a Request for Arbitration with the CAS ADD. The request waived IWF's right under Article A16 of the ADD Rules to jointly nominate a Sole Arbitrator and requested that the Sole Arbitrator be appointed by the President of the CAS ADD.

51. On 29 November 2022, the matter was referred to Mr David Benck, Attorney-at-Law in Alabama, USA, as Sole Arbitrator by the President of the CAS ADD.

52. On 7 December 2022, Ms. Schlittig filed her Answer.

53. Between 7 and 15 December 2022, the Parties and the CAS ADD Office exchanged correspondence regarding the necessity to hold a hearing. On 17 January 2023, and further to the Parties' joint requests, the CAS ADD Office confirmed that the hearing in this matter would be conducted by videoconference on 8 February 2023.

54. On 3 February 2023, IWF and Ms. Schlittig signed and returned the Order of Procedure to the CAS ADD Office.

55. The video-conference hearing was held on 8 February 2023. In addition to the Sole Arbitrator and Mr. Fabien Cagneux, Managing Counsel of the CAS ADD, the following persons attended the hearing:

For the IWF:

- Ms Domique Leroux-Lacroix, ITA Head of Legal Affairs
- Ms Ayesha Talpade, ITA Senior Legal Counsel
- Prof. Martial Saugy, Expert

For the Athlete:

- Ms. Vicky Annett Schlittig, Athlete

- Prof. Dr. Steffen Lask, Counsel
- Mr. Severin Lask, Counsel
- Prof. Douwe de Boer, Expert
- Ms. Isabel Meyke, Interpreter

56. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully and fairly respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Claimant

57. The following is a summary of IWF's submissions, as contained in its written Request for Arbitration and supplemented by oral submissions at the hearing.

58. Ms. Schlittig received an Adverse Analytical Finding ("AAF") for the prohibited steroid dehydrochloromethyl-testosterone ("DHCMT") in both Sample A and Sample B. Such substance is always prohibited and is classified as a non-specified substance under "S1. Anabolic Androgenic Steroid" ("AAS") of the 2021 WADA Prohibited List.

59. Given the likelihood of such intentional use, this violation could also constitute a further violation under Article 2.2 of the WADC, in regard to use of the Prohibited Substance found in the Athlete's samples.

60. Ms. Schlittig had failed to establish that her Anti-Doping Rule Violation was unintentional, and thus, there were no mitigating grounds that could reduce the applicable period of Ineligibility.

B. The Athlete

61. The following is a summary of Ms. Schlittig's submissions, as contained in its written Request for Arbitration and supplemented by oral submissions at the hearing.

62. That Ms. Schlittig's metabolite profile is unusual according to all other expert assessments, in that there were no typical long-term metabolites, such as M3, present compared with all 29 comparable DHCMT doping cases that showed long-term metabolites in the last three years.

63. That Ms. Schlittig's case, a value of 0.6 ng/ml was detected, which is very close to the minimum threshold. That the low concentration of DHCMT found in the sample suggests that it was metabolized immediately before the sample was collected and would not have provided any performance-enhancing effects at this concentration, thus supporting the argument that Ms. Schlittig did not intentionally consume DHCMT with the intention of enhancing her performance.

64. That Ms. Schlittig's ingestion of DHCMT must have occurred immediately before the sample was taken, rather than several days prior, otherwise, the 10 mg dose of DHCMT would have shown the presence of the M3 metabolite.

65. Furthermore, Ms. Schlittig argued that the scenario is supported by the fact that she was subjected to doping tests immediately before 26 September 2021 (on 06 September 2021) and immediately after 26 September 2021 (on 04 October 2021) and tested negative in both cases.

66. That the presence of DHCMT in free, non-glucuronidated form would hardly be explicable toxicologically and would suggest a manipulation of the urine sample with DHCMT with-out body passage.

67. there were several opportunities for contact between Ms. Schlittig and athletes, coaches, and support staff of other nationalities during the European U-23 Champion- ships, which could potentially have resulted in a transdermal transfer of DHCMT

68. The Athlete's submissions, in essence, may be summarised as a request for a finding from CAS ADD of a no fault or negligence on the part of Ms. Schlittig.

V. JURISDICTION

69. The IWF ADR clarifies the scope of application of the IWF ADR and states that:

These Anti-Doping Rules shall apply to:

a. IWF, including its board members, directors, officers and specified employees, and Delegated Third Parties and their employees, who are involved in any aspect of Doping Control.

b. each of its Member Federations, including their board members, directors, officers and specified employees, and Delegated Third Parties and their employees, who are involved in any aspect of Doping Control.

c. the following Athletes, Athlete Support Personnel and other Persons:

i. all Athletes and Athlete Support Personnel who are members of the IWF, or of any Member Federation, or of any member or affiliate organization of any Member Federation (including any clubs, teams, associations, or leagues).

ii. all Athletes and Athlete Support Personnel who participate in such capacity in Events, Competitions and other activities organized, convened authorized or recognized by IWF, or any Member Federation, or by any member or affiliate organization of any Member Federation (including any clubs, teams, associations, or leagues), wherever held.

iii. any other Athlete or Athlete Support Personnel or other Person who, by virtue of an accreditation, a license or other contractual arrangement, or otherwise, is subject to the authority of IWF, or of any Member Federation, or of any member or affiliate organization of any Member Federation (including any clubs, teams, associations, or leagues), for purposes of anti-doping; and

iv. Athletes who are not regular members of IWF or of one of its Member Federations but who want to be eligible to compete in a particular International Event or IWF Event.

70. As a condition of her participation or involvement in the sport, Ms. Schlittig agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of IWF to enforce these Anti-Doping Rules, including any Consequences for the breach thereof, and to the jurisdiction of the hearing panel.

71. Article 8.1.1 of the IWF ADR indicates that the IWF has delegated its responsibilities related to the adjudication of anti-doping matters to CAS ADD. By virtue of this delegation, the Sole Arbitrator has jurisdiction to adjudicate matters concerning the assertion of ADRVs.

VI. THE APPLICABLE LAW

72. Article 2 of the IWF ADR specifies the circumstances and conduct which constitute an ADRV. Article 2.1 defines what constitutes an ADRV for Presence of a Prohibited Substance:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample:

2.1.1 It is the 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.

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 Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a

Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

A. Burden and Standards of Proof

73. Pursuant to Article 3.1 of the IWF ADR, the burden of proof is on the IWF to establish an ADRV, to the comfortable satisfaction of the Panel. This is explained as follows:

> *IWF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether International Weightlifting Federation has established an anti-doping rule 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 Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.*

74. Once an ADRV has been established by the IWF, the burden of proof then shifts to the athlete to prove either that the ADRV should not be considered as such, or that the ADRV was unintentional or that the applicable period of Ineligibility should be reduced, suspended, or eliminated on the grounds provided for in the IWF ADR. The athletes' burden of proof is on a balance of probability.

75. When it comes to laboratory analysis, Article 3.2.2 of the IWF ADR makes it clear that WADA-accredited laboratories (such as the Cologne Laboratory) are presumed to have conducted sample analysis in according with the ISL and it is for the athlete to rebut such presumption by establishing first that a departure from the ISL occurred and second, that such deviation could reasonably have caused an AAF.

76. While Ms. Schlittig initially raised concerns about the process, she ultimately did not argue that departures from the ISL occurred.

B. Provisional Suspension

77. As per Article 7.4.1 of the IWF ADR, it is mandatory for the IWF to impose a Provisional Suspension for AAFs for all substances classified as non-specified.

> *If IWF receives an Adverse Analytical Finding or an Adverse Passport Finding (upon completion of the Adverse Passport Finding review process) for a Prohibited Substance or a Prohibited Method that is not a Specified Substance or a Specified Method, IWF shall impose a Provisional Suspension on the Athlete promptly upon or after the review and notification required by Article 7.2.*

78. Further, the limited grounds for lifting a Provisional Suspension include that the violation is likely to have involved a Contaminated Product or that the violation involves a Substance of Abuse. In this perspective:

A mandatory Provisional Suspension may be eliminated if: (i) the Athlete demonstrates to the CAS ADD that the violation is likely to have involved a Contaminated Product, or (ii) the violation involves a Substance of Abuse and the Athlete establishes entitlement to a reduced period of Ineligibility under Article 10.2.4.1

79. Article 7.4.1 also makes it clear that the CAS ADD's decision not to eliminate a mandatory Provisional Suspension on account of the Athlete's assertion regarding a Contaminated Product shall not be appealable.

80. Lastly, Article 7.4.3 mandates that in the event a Provisional Suspension is imposed, an athlete must be given the opportunity for either a Provisional Hearing or an expedited hearing.

C. Applicable Consequences

a. Period of Ineligibility

81. Provided that the IWF meets its evidentiary thresholds, the ADRV is established.

82. According to Article 10.2 of the IWF ADR, the period of Ineligibility imposed for the violation of Article 2.1 and/or Article 2.2 for a Non- Specified Substance, [like DHCMT] shall be four years unless the Athlete can establish that the ADRV was not intentional.

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 10.5, 10.6 or 10.7:

10.2.1 The period of Ineligibility, subject to Article 10.2.4 shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

83. The notion of "intent" is defined in Article 10.2.3 of the IWF ADR:

As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they 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.

84. If the Athlete establishes that the ADRV should not be considered as Intentional, the Athlete can attempt to further eliminate or reduce the period of Ineligibility based on the grounds provided in Article 10.5, Article 10.6 or Article 10.7 of the IWF ADR, as follows:

If 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.

85. The IWF ADR defines "No Fault or Negligence" 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 Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

If an Athlete or other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, 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 (8) years.

86. The IWF ADR defines "No Significant Fault or Negligence" as:

The Athlete or other Person's establishing that any 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 Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system. [emphasis added]

b. Disqualification of Results

87. Pursuant to Article 9 of the IWF ADR, an ADRV in connection to an In-Competition test results in the automatic disqualification of the results obtained in that competition with all resulting consequences, as follows:

An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points, and prizes.

88. Furthermore, according to Article 10.10 of the IWF ADR, all the athlete's results obtained from the date of sample collection and until the imposition of the Provisional Suspension shall be disqualified, unless the athlete establishes that fairness requires otherwise. Article 10.10 of the IWF ADR reads as follows:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness

requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

VII. MERITS

A. Merits of Provisional Suspension Issue

89. As a preliminary issue, via correspondence dated 19 September 2022, Ms. Schlittig requested that the IWF lift her mandatory Provisional Suspension imposed under Article 7.4.1 of the IWF ADR.

90. The ITA informed Ms. Schlittig that the ITA would refer the entire matter for adjudication to the CAS ADD including both the question of the lifting of Provisional Suspension imposed, as well as the merits of the case, and that she had the opportunity to request for an expedited hearing process before CAS ADD.

91. No request was made for an expedited hearing, and as such, the Sole Arbitrator is addressing the Provisional Suspension issue contemporaneously with all other issues in this Award.

B. Merits of Anti-Doping Issue

92. The analysis of Ms. Schlittig's B-sample confirmed the presence of DHCMT found in her A-sample.

93. Ms. Schlittig initially raised two arguments that require brief discussion.

94. Ms. Schlittig questioned whether there had been a "mix up of samples" owing to an incorrect name on an annexure document sent with the AAF Notification. The ITA countered that it was a mere clerical mistake (referring to another athlete's name in the annex of the AAF notification) that was made more than eight weeks after the sample was collected and analyzed and did not undermine the sample's chain of custody. The DNA Report ordered by Ms. Schlittig herself, and made in coordination with the ITA, irrefutably established that the urine analyzed by the Cologne Laboratory, was provided by Ms. Schlittig. After being provided with the DNA Report, Ms. Schlittig agreed that *"there are no doubts that the urine of the A-and B-samples originates from Ms. Schlittig"*.

95. Later, Ms. Schlittig consulted with expert Dr. de Boer and argued that the absence of some of the typical metabolites of DHCMT undermined the validity of the Adverse Analytical Finding and suggested possible manipulation of the doping sample. ITA's laboratory documentation originally indicated the presence of DHCMT only. Based on this information, Ms. Schlittig and her defense assumed that DHCMT was present in its pure form. The presence of DHCMT in pure form, i.e. in non-glucoronidated form, could potentially indicate manipulation of the doping sample.

96. The ITA requested Prof. Martial Saugy, external scientific anti-doping expert, to review the analytical report and the A and B sample LDPs prepared by the Cologne Laboratory. Prof. Saugy unequivocally confirmed that *"the analytical results are fully reliable and that the presence of DHCMT in the urine sample no. 0054019 had been clearly established"* and accurately reported by the Cologne Laboratory.

97. Ms. Schlittig complained that the ITA's actions did not meet the standards expected of an anti-doping agency, and that it withheld the additional information relied on by Prof. Saugy that ultimately invalidated their theory of possible contamination of the sample from the outside. Notwithstanding, after the ITA provided additional information on 13 July 2022, Ms. Schlittig agreed that a potential manipulation of the doping sample could be ruled out.

98. Ms. Schlittig further complained that she had to made significant, costly efforts to determine the origin of the substance DHCMT and to undertake DNA testing necessitated by the clerical mistakes, withholding of information, and negligent management of the legal dispute process on the part of the ITA.

99. Notwithstanding Ms. Schlittig's numerous complaints, she ultimately stipulated that the documentation proved the proper detection of the DHCMT and argued that she had no fault.

100. As set forth in Article 2.1.1 of the IWF ADR, the IWF does not have to show intent, fault, negligence or knowing use on the Athletes' part to establish an ADRV for Presence under Article 2.1. This principle of strict liability, according to which an ADRV occurs whenever a Prohibited Substance is detected in an athlete's bodily specimen.

101. Accordingly, the ITA argued that the IWF discharged its burden of proof to establish the ADRV for the Presence of a Prohibited Substance in accordance with Article 2.1 of the IWF ADR to the comfortable satisfaction of the Panel.

102. The IWF ADR defines "No Significant Fault or Negligence" as:

> *The Athlete or other Person's establishing that any 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 Protected Person or Recreational Athlete, for any violation of Article 2.1, <u>the Athlete must also establish how the Prohibited Substance entered the Athlete's system</u>.* [emphasis added]

103. Ms. Schlittig thus argued that the Prohibited Substance entered her system when she came into *"contact with DHCMT through transdermal contacts in a sabotage act, which has resulted in the positive finding"*. Notwithstanding, she did not make specific accusations against a third-party, as she was concerned that doing so could expose her to criminal prosecution in Germany.

104. ITA's expert Professor Saugy agreed with the probability of transdermal administration, in part due to the lack of metabolites, and opined that the AAF is compatible with a transdermal application of 10 mg of DHCMT several days before 26 September 2021.

105. Ms. Schlittig's expert, Dr. de Boer, also agreed with the probability of transdermal administration but opined that the AAF is compatible with a transdermal application as low as 1 mg and as high as 10 mg, depending on whether it was administered a few days or a few hours before the testing.

106. As such, the Sole Arbitrator finds that based upon the consensus of the expert witnesses, that the exclusive detection of DHCMT in low or trace amounts, without the presence of associated metabolites, indicates that the transdermal application occurred within a few hours to a few days before 26 September 2021.

107. Ms. Schlittig underwent anti-doping testing on 6 September 2021 (twenty days before the 26 September AAF), and again on 4 October 2021 (eight days after the 26 September AAF), both of which were negative. Both expert witnesses agreed that this strongly indicated that any pharmacological manipulation of DHCMT would not have enhanced performance as DHCMT requires regular administration accompanied by physical exertion.

108. Ms. Schlittig testified under oath in written submissions, pleadings and oral evidence in the proceedings that during her journey to the European U-23 Championships, she had multiple opportunities for physical contact with other athletes, coaches, and support staff.

109. For example, on the flight from Helsinki to Rovaniemi on 23 September 2021, Ms. Schlittig testified that she sat alongside numerous athletes, coaches, and support staff from Georgia, the Czech Republic, Poland, and France.

110. Upon arrival in Rovaniemi, all the athletes, coaches, and support staff were transported to a COVID testing station, where they sat together in a crowded bus for 3-4 hours.

111. On the following days, 24 September 2021, and 25 September 2021, Ms. Schlittig testified that she had significant contact with athletes during the weigh-in, training, lunch, and dinner.

112. A shuttle bus was also provided between the hotels and the sports centres, where Ms. Schlittig testified that she again came into contact with athletes from various nationalities.

113. On the day of the competition, 26 September 2021, there was the mandatory competition weigh-in at 4:00 pm, followed by the competition at 6:00 pm. Ms. Schlittig testified that she was also in direct contact with several athletes, coaches, and support staff during this time. After the competition, the doping control took place.

114. Ultimately, Ms. Schlittig testified that based on these circumstances, the contact between Ms. Schlittig and athletes, coaches, and support staff during the European U-23 Champion-ships, likely resulted in a transdermal transfer of DHCMT.

115. Dr. de Boer testified that the current situation was vastly different from all known and documented cases of sports pharmacology involving DHCMT. All other documented cases show the presence of long-term metabolites, rather than just the short-term detectable parent compound in pure form. Dr. de Boer indicated that the detection of DHCMT, which can only be detected for a short time, without any accompanying detection of metabolites, differs

significantly from all twenty-nine other DHCMT doping cases in the last three years at the Institute of Doping Analysis and Sports Biochemistry in Germany.

116. Based upon all of the above considerations, the Sole Arbitrator agrees with Dr. de Boer, that based upon the prior and subsequent negative tests and the low/trace amounts of DHCMT, in combination with the testimony and evidence as to the numerous contacts that occurred during the few days before the ADRV, that it is probable that Ms. Schlittig was subjected to inadvertent, transdermal administration of DHCMT that was not intentional, and thus that she bears no fault.

VIII. COSTS

(…)

VIII. APPEAL

120. 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 Code of Sports-Related Arbitration, applicable to appeals procedures.

121. The submissions of the Parties were considered in their totality by the Sole Arbitrator. This Award, however, sets out only those matters which are necessary to the determination of the necessary sanction applicable to the Athlete's ADRV.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Weightlifting Federation on 15 November 2022 is dismissed.

2. Ms. Vicky Annett Schlittig is found guilty of an anti-doping rule violation in accordance with Article 2.1 of the International Weightlifting Federation Anti-Doping Rules ("IWF ADR").

3. Ms. Vicky Annett Schlittig has established in accordance with Article 10.5 of the IWF ADR that she bore No Fault or Negligence for the anti-doping rule violation. No period of Ineligibility is imposed.

4. In accordance with Article 9 of the IWF ADR, all the competitive results of Ms. Vicky Schlittig obtained during the 2021 IWF European Junior Championships are Disqualified with all resulting Consequences, including forfeiture of any medals, points, and prizes.

5. (…).

6. (…).

7. All other motions or prayers for relief are dismissed.