

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

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Case No. 01-19-0001-6084

In the Matter of the Arbitration between

TAYLOR CRABB, Claimant

and

USA VOLLEYBALL, Respondent

and

Affected Athletes: JAKE GIBBS, RYAN DOHERTY, MILES EVANS, JOHN HYDEN,  
CASEY PATTERSON, and REID PRIDDY.

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**FINAL AWARD**

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association ("AAA"), and in accordance with the Ted Stevens Olympic and Amateur Sports Act ("ASA") and Section 9 of the United States Olympic Committee ("USOC") Bylaws, having been duly sworn, and having fully considered the Claimant's Section 9 Demand for Arbitration, Respondent's Answer, and their respective prehearing briefs, exhibits, witness testimony, and oral arguments during a May 24, 2019 telephonic hearing (at the conclusion of which the parties and their legal counsel agreed they had a full and fair opportunity to be heard and it was closed by the Arbitrator) does hereby, AWARD, as follows:

**THE PARTIES**

Claimant Taylor Crabb is a 27-year old beach volleyball athlete. He and his partner Jake Gibb currently are the top-ranked U.S. men's beach volleyball team. They aspire to qualify to represent the U.S. in the 2020 Olympic Games in Tokyo, Japan by their performances in future FIVB beach volleyball competitions, including the 2019 FIVB Beach Volleyball Senior World Championships in Hamburg, Germany ("2019 Senior World Championships") that begins on

June 28, 2019. Mr. Crabb was represented by Howard L. Jacobs and Katy Freeman, Law Offices of Howard L. Jacobs, Westlake Village, California.

USA Volleyball (“USAV”) is the National Governing Body (“NGB”) for the sport of volleyball in the United States, which is recognized by the USOC. USAV was represented by Steven B. Smith and Suzanne A. Crespo, Bryan Cave Leighton Paisner LLP, Colorado Springs, Colorado.<sup>1</sup>

## **PROCEDURAL BACKGROUND**

Mr. Crabb filed his Section 9 Complaint and Demand for Arbitration on May 22, 2019.

The AAA appointed the Arbitrator on May 23, 2019.

A telephonic preliminary hearing was held on May 23, 2019, during which Jake Gibb, Ryan Doherty, Miles Evans, John Hyden, Casey Patterson, and Reid Priddy were identified as Affected Athletes. Soon thereafter AAA informed them by email about this arbitration proceeding. None of these athletes chose to participate in this proceeding, although Mr. Gibb provided witness testimony.

USAV filed its “Answer and Prehearing Statement” on May 23, 2019.

On May 23, 2019, the parties submitted a “Joint Stipulation As To Central Issues For Section 9 Hearing” (“Joint Stipulation”), which states as follows:

1. USA Volleyball (“USAV”) and Taylor Crabb agree that this Section 9 hearing shall serve as the hearing to which Mr. Crabb is entitled under Section 9 of the USOC Bylaws before USAV can deny him the opportunity to participate in protected competitions.
2. Mr. Crabb agrees for the purpose of this hearing that his participation in the May 11, 2019 “Pro Clinic with AVP Champions Jake Gibbs and Taylor Crabb” (hereinafter “Clinic”) was a technical violation of the September 27, 2017 Settlement Agreement and Release between Mr. Crabb and USAV (hereinafter “Agreement”). Mr. Crabb reserves the right to argue that at the time of his participation, he did not know and had no reason to know that his participation in the Clinic violated the Agreement.

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<sup>1</sup> The Arbitrator expresses his appreciation for the excellent, focused advocacy and professionalism of both parties’ counsel during this expedited arbitration proceeding.

3. The parties agree that the primary issue in this hearing is what penalty, if any, would be just and proportionate as a result of Mr. Crabb's participation in the Clinic in violation of the Agreement. The parties further agree that Arbitrator Mitten has authority to decide this issue.

On May 24, 2019, a telephonic hearing was held from 1030am until approximately 4pm CT, during which the following persons testified: Sumi Epie (one of the owners of NTMCORE, which produces and sells nutrition supplements); Rachael Stafford (USAV General Counsel); Rich Lambourne (coach of the Crabb/Gibb beach volleyball team); Mr. Crabb; and Mr. Gibb. Sara Pflipsen (Sr. Counsel NGB and Athlete Affairs, USOC); Emily Azevedo (USOC Associate Athlete Ombudsman); and Martin Cerceo (USOC law student clerk) listened to the hearing.

On May 26, 2019, the Arbitrator issued an "Operative Decision and Award," which, *inter alia*, determined he has jurisdiction and resolved the primary issue in dispute as follows:

USAV's May 17, 2019 immediate suspension of Mr. Crabb's USAV membership and participation in any USAV events through September 27, 2021 was an authorized and good faith effort to protect USAV junior girls members from any misconduct by him. The Arbitrator determines that suspending Mr. Crabb's USAV membership and participation in any USAV or FIVB events from May 17, 2019 until the 2019 FIVB Beach Volleyball Senior World Championships in Hamburg, Germany ("Senior World Championships") beginning on June 28, 2019 is a just and proportionate penalty for his violation of the Settlement Agreement. Because Mr. Crabb's participation in the Clinic did not harm any USAV junior girls members and did not result in any misconduct by or allegations of misconduct against him, the Arbitrator concludes that suspending him from participating in the Senior World Championships and any subsequent USAV or FIVB Beach Volleyball competitions (for which he and his team otherwise qualify) is not a just and proportionate penalty for his May 11, 2019 violation of the Settlement Agreement. Therefore, this temporal aspect of Mr. Crabb's suspension is set aside and vacated.

## UNDISPUTED AND/OR FINDINGS OF MATERIAL FACTS

On September 27, 2017, the parties entered into the Agreement, which is governed by Colorado law (§8) and resolved alleged potential violations of the USAV Code of Conduct and SafeSport Policy by Mr. Crabb involving USAV junior girls members, specifically violations of sections 2 and 9 of the USAV Code of Conduct respectively prohibiting “possession, consumption or distribution of alcohol and/or tobacco if illegal or in violation of USA Volleyball (USAV) or Regional Volleyball Association (RVA) policy” and “conduct which is inappropriate as determined by comparison to normally accepted behavior” that had been referred to and were pending before the USAV Corporate Ethics and Eligibility Committee. (Agreement, Recitals C and E and Paragraph 3, bullet point 4).

From USAV’s perspective, the primary of objective of this Agreement is to protect USAV junior girls from any potential harm by preventing Mr. Crabb from having any interactions with them for a 4-year period of time beginning on its effective date (i.e., September 27, 2017- September 27, 2021), and its key elements are set forth in paragraphs 3 and 4:

3. Suspension of Crabb’s Membership: Other Conditions. Crabb agrees that he will be suspended from membership in USAV for a period of four (4) months from the Effective Date (“Suspension”), and that:

- \* Crabb will complete the following educational course(s) at his expense, and provide proof of completion to USAV before the end of his four (4) month Suspension: 1) All SafeSport training curriculum provided for through the U.S. Center for SafeSport, and 2) California Harassment Prevention Training—2 hour Supervisor Version through CalChamber (HR California);

- \* Crabb will be ineligible to participate in or attend any activities sanctioned by, or in connection with, USAV, and which also involve junior girls, including but not limited to chaperoning, coaching, viewing and volunteering (collectively the “Activities”), for a period of four (4) years from the Effective Date and until reinstated by USAV (however, nothing herein shall prevent Crabb from chaperoning athletes who are not junior girls; coaching athletes who are not junior girls; viewing games that do not involve junior girls irrespective of the possible presence of junior girls at the same tournament; volunteering for teams that do not include junior girls; and, following the end of the Suspension, playing in any tournaments irrespective of the possible presence of junior girls at the same tournament) (“Probation”);

\* When considering whether to reinstate Crabb's privileges in regards to the Activities after his Probation, USAV may consider Crabb's behavior during the four (4) year period to determine whether or not he is fit to participate in the Activities, including but not limited to: whether or not he has violated this Agreement; USAV's Bylaws, rules, policies, or procedures, including but not limited to its Code of Conduct, Athlete Agreement, and SafeSport Policy; the rules, policies, or procedures of the U.S. Center for SafeSport; another organization's rules; or criminal law;

\* USAV may notify its Board, relevant USAV staff and the relevant Regional Commissioner of this Agreement, and may post Crabb's suspensions on its website, including his name, the terms of his suspensions, the terms of his ineligibility to coach junior girls, and that the penalties are for violations of sections 2 and 9 of the USAV Code of Conduct, which prohibit respectively, "possession, consumption or distribution of alcohol and/or tobacco if illegal or in violation of USA Volleyball (USAV) or Regional Volleyball Association (RVA) policy" and "conduct which is inappropriate as determined by comparison to normally accepted behavior."

4. Release by USAV. USAV, on its behalf and on behalf of its officers, directors, employees, agents, assigns, affiliates, successors, predecessors, insurers, attorneys and representatives, releases and discharges Crabb from any and all claims, demands, obligations, actions, liabilities, loss or damages of every kind and nature related in any way to the Action and arising on or before the Effective Date. By signing this Agreement, USAV does not waive any rights it may have to seek penalties (including, but not limited to, the extension of Crabb's Suspension or Probation) against Crabb for any behavior that is unrelated to the Action, or for violations of this Agreement; USAV's Bylaws, rules, policies, or procedures, including but not limited to its Code of Conduct, Athlete Agreement, and SafeSport Policy; the rules, policies, or procedures of the U.S. Center for SafeSport; another organization's rules; or criminal law.

From Mr. Crabb's perspective, this Agreement is "fair" and he understands its provisions requiring him not to have any interactions with USAV junior girls throughout its duration.

After serving his four-month suspension and completing the required SafeSport and California Harassment Prevention Training educational courses, Mr. Crabb's USAV membership was reinstated on or about January 27, 2018, which enabled him to

participate in USAV and FIVB competitions and events consistent with the terms of the Agreement.

Mr. Crabb's beach volleyball playing partner (Jake Gibb) and coach (Rich Lambourne) were aware that his USAV membership previously had been suspended, but they did not know the reasons for it. Mr. Crabb did not inform either of them that he was on probation after his USAV membership was reinstated or that he was required not to have any interactions with USAV junior girls during his probationary period extending through September 27, 2021.

From September 27, 2017 through May 10, 2019, Mr. Crabb complied with and did not violate any of the terms of the Agreement.

In April 2019, Mr. Epie and Mr. Gibb negotiated a sponsorship contract between NTMCORE and the Crabb/Gibb beach volleyball team, which among other things, requires Messrs. Crabb and Gibb to participate in one NTMCORE event annually and has a morality clause governing their conduct. Mr. Crabb did not inform Mr. Epie that his USAV probation terms prohibited him from having any interactions with USAV junior girls, and Mr. Epie did not otherwise know about his probation requirements.

With the objectives of attracting junior and adult players from throughout the Southeast and introducing them to NTMCORE's nutrition supplements, Mr. Epie organized a May 11, 2019 "unstructured" beach volleyball clinic (i.e., without any formal coaching or training) featuring Messrs. Crabb and Gibbs in Murfreesboro, Tennessee, which he believed would be hosted by Colin Moore and would not have any affiliation with USAV. Promotional materials describe it as "a Pro Clinic With AVP Champions Jake Gibb & Taylor Crabb with Session 1 (Ages 12 to 15) from 9am-1230pm, Session 2 (Ages 16 to adult) from 1-430pm, and King & Queen of the Beach (age 15 to adult) from 430-7pm" as well as "C2 Attack Pro Camp—May 11 With Taylor Crabb and Jake Gibb." Attendee T-shirts state "NTMCORE presents Jake Gibb & Taylor Crabb Pro AVP Clinic hosted by C2 Attack."

C2 Attack is a Hendersonville, Tennessee volleyball club, which is a USAV member club and a local club sponsored by NTMCORE. Mr. Epie was unaware that C2

Attack is a USAV member club and did not believe the May 11, 2019 clinic was affiliated with USAV or one of its member clubs. On the May 24, 2019 hearing date, C2 Attack's website stated: "More information coming soon on C2 Attack's affiliations with national and regional organizations."

Messrs. Crabb and Gibb believed the May 11, 2019 clinic was an NTMCORE sponsor event that was not affiliated with USAV or any of its member clubs. Before participating in it, Mr. Crabb did not make any inquiries or attempt to determine if the clinic was affiliated with USAV or one of its member clubs or whether USAV junior girls would be in attendance.

Mr. Crabb had not heard of C2 Attack until he participated in this clinic on May 11, 2019 and was given a T-shirt stating "NTMCORE presents Jake Gibb & Taylor Crabb Pro AVP Clinic hosted by C2 Attack." At the time, he did not know that C2 Attack is a USAV member club and did not make any inquiries or take any steps to determine if any of the junior girls in attendance at the clinic were USAV member athletes.

Mr. Crabb participated in Sessions 1 and 2 of the clinic, which were attended by USAV junior girls as well as others, by answering attendees' questions and giving them advice regarding their playing technique. He left the clinic before the beginning of the King & Queen of the Beach event, which was scheduled from 430-7pm. Mr. Epie did not observe Mr. Crabb do anything that was inappropriate or would violate the morals clause in his NTMCORE sponsorship contract during his participation in the clinic. Clinic attendees enjoyed their interaction with Mr. Crabb, and there were no complaints from anyone regarding his conduct during the clinic.

Within a few days thereafter, USAV became aware of Mr. Crabb's participation in the clinic when his Instagram post showing him in the presence of junior girls volleyball players was brought to the attention of its Director of Beach Volleyball, who then informed Jamie Davis, USAV's CEO. Believing that Mr. Crabb's participation in an activity hosted by a USAV member club in which junior girls participated is a "serious violation" of the Agreement, Mr. Davis decided to suspend him through the duration of his probation period, which was "not an easy decision" because the Crabb/Gibb team was

the current top-ranked U.S. men's beach volleyball team. Given the existing and important emphasis on preventing SafeSport violations, he considered this suspension to be "fair" and "appropriate", which USAV's board of directors unanimously approved, because he did not trust Mr. Gibb to comply with the Agreement by not having any future interaction with USAV junior girls. He considered that Mr. Crabb had not violated any of the terms of the Agreement from September 27, 2017 through May 10, 2019, but he did not believe his past compliance to be a significant mitigating factor for the purpose of determining his penalty for violating the Agreement.

In a May 17, 2019 letter, Mr. Davis informed Mr. Crabb: "USAV has determined that your coaching of a USAV junior girls club at a camp is in violation of your Agreement. . . . Because you have violated your Agreement by engaging in [this] prohibited activity[,] USAV is hereby suspending your membership with USAV, which includes any further participation in USAV events, effective immediately. Said suspension shall be for the remainder of the four (4) year probation period determined in the Agreement." Before imposing this suspension, USAV did not provide Mr. Crabb with any notice or opportunity to be heard.

USAV's May 17, 2019 suspension of Mr. Crabb prevented the Crabb/Gibb team from participating in FIVB men's beach volleyball tournaments in China and the Czech Republic, which are "protected competitions" under Section 1.3 (w) of the USOC Bylaws because participating teams' results and earned points in FIBV competitions from October 2018-June 2020 are used to determine which teams qualify for the 2020 Olympic Games. This suspension also may have resulted in potential lost income (i.e., prize winnings) because the Crabb/Gibb team was prohibited from participating in these tournaments. USAV's continuing suspension of Mr. Crabb through September 27, 2021 will preclude him and the Crabb/Gibb team from participating in an upcoming FIBV tournament in Warsaw, Poland they had planned to enter, the 2019 Senior World Championships, several subsequent FIVB beach volleyball competitions that are qualifying events for the 2020 Olympic Games, and the 2020 Olympic Games, which all are "protected competitions."

## **LEGAL ANALYSIS**



The Arbitrator has *de novo* jurisdiction to determine a just and proportionate penalty for Mr. Crabb's breach of the Agreement pursuant to Section 9 of the USOC Bylaws because USAV's May 17, 2019 suspension denies him the opportunity to participate or qualify to participate in future "protected competitions" under Section 1.3 (w) of the USOC Bylaws. USAV has the burden of proving by a preponderance of evidence that its disciplinary suspension of Mr. Crabb through September 27, 2021 is just and proportionate under the circumstances. *Lopez v. USA Taekwondo*, AAA 01 17 0001 1733 (August 8, 2017) (ruling that arbitral standard of review of NGB's disciplinary action is *de novo* and that NGB must prove it "was reasonable and not for any improper purpose"). See also *Bloom v NCAA*, 93 P.3d 621 (Colo. App. 2004) (a sports governing body's discretionary decision must be "not manifestly arbitrary, unreasonable or unfair" to be valid and enforceable).

USAV asserts that its May 17, 2019 suspension of Mr. Crabb's USAV membership through September 27, 2021, which prevents him from participating in any USAV or FIVB competitions or events during this time, is a just and proportionate penalty for his May 11, 2019 "serious violation" of the Agreement. It contends that a "strong sanction" is necessary to protect USAV junior girls from possible harm resulting from Mr. Crabb's potential misconduct during any future interactions with them. More specifically, USAV asserts: "It was Mr. Crabb's obligation to ensure compliance with the Settlement Agreement, but i) [sic] he failed to take any steps in advance to confirm whether or not the clinic was connected to USAV; and 2) when he saw that there were junior girls at the clinic, he failed to leave or check whether his attendance would violate the Settlement Agreement." USA Volleyball's Answer and Prehearing Statement, ¶35. Therefore, "[a] suspension from membership in USAV for the duration of Mr. Crabb's probation is appropriate, since Mr. Crabb has demonstrated that he cannot comply with his probation." *Id.* at ¶36.

Mr. Crabb contends that suspending him for the entire duration of his period of probation is not a just and proportionate penalty for his May 11, 2019 "technical violation" of the Agreement, which did not violate the SafeSport Code or any USAV rules. He contends that his breach of the Agreement was an "understandable mistake," which does not constitute a known, intentional, or reasonably knowable violation. He contends that a continuing USAV suspension preventing him from participating in future FIVB competitions in addition to the China and

Czech Republic tournaments, particularly the 2019 Senior World Championships, is not a just and proportionate penalty because it would effectively preclude the Crabb/Gibb men's beach volleyball team from qualifying to represent the U.S. in the 2020 Olympic Games.

Based on the evidence of record in this proceeding, the Arbitrator finds that Mr. Crabb's participation in the May 11, 2019 clinic violated the Agreement because it was hosted by C2 Attack (a USAV member club) and several USAV junior girls members attended it. Because his participation was required by his sponsorship contract with NTMCORE and the clinic was organized by Mr. Epie without Mr. Crabb's involvement and he believed it was an AVP clinic, this was an inadvertent and unintentional violation of the Agreement. If Mr. Crabb had exercised reasonable care and used due diligence, he would have discovered that the clinic was hosted by a USAV member club before participating in it (e.g., by contacting USAV in advance) and/or determined whether USAV junior girls members were in attendance when it was being held (e.g., by making inquiries when he saw that junior girls were present during Sessions 1 and 2 of the clinic).

Pursuant to ¶4 of the Settlement Agreement, USAV has valid authority to impose a just and proportionate penalty on Mr. Crabb for his violation of it, including suspension of his USAV membership and participation in any USAV events for an appropriate and reasonable period of time based on the materiality and seriousness of his violation as well as the resulting consequences.

The Arbitrator determines that USAV's May 17, 2019 immediate suspension of Mr. Crabb's USAV membership and participation in any USAV events through September 27, 2021 was an authorized and good faith effort to protect USAV junior girls from any harm caused by his possible misconduct during any future interactions with them. The Arbitrator determines that suspending Mr. Crabb's USAV membership and participation in any USAV or FIVB events from May 17, 2019 until the 2019 Senior World Championships, which is approximately a six-week suspension preventing him from participating in at least three FIVB competitions (i.e., China, Czech Republic, and Warsaw, Poland tournaments) used to determine which teams qualify for the 2020 Olympic Games, is a just and proportionate penalty for his violation of the Agreement.

Because Mr. Crabb's participation in the clinic for approximately 7 ½ hours during which

Sessions 1 and 2 were held did not harm any USAV junior girls and did not result in any misconduct by or allegations of misconduct against him, the Arbitrator concludes that suspending him from participating in the 2019 Senior World Championships and any subsequent USAV or FIVB Beach Volleyball competitions (for which he and his team otherwise qualify) is not a just and proportionate penalty for his May 11, 2019 violation of the Agreement. The Arbitrator finds that Mr. Crabb's timely completion of the two educational requirements of the Agreement and otherwise full compliance with its terms from September 27, 2017 through May 10, 2019 (a period of approximately 19 ½ months) are significant mitigating factors to be considered in determining a just and proportionate penalty for his May 11, 2019 breach of the Agreement (although not valid justifications for its violation). Therefore, this temporal aspect of Mr. Crabb's suspension is set aside and vacated.

Pursuant to the Joint Stipulation, in order to further USAV's laudable and legitimate objective of protecting USAV junior girls from any potential future misconduct by Mr. Crabb during interactions with them and to provide a strong deterrent to his future violation of the Settlement Agreement, the Arbitrator exercises his authority to revise the Agreement as follows:

Bullet point 2 of Paragraph 3 on page 2 is modified to state "Crabb will be ineligible to participate in or attend any activities involving junior girls (i.e., females under the age of 18 years old), including but not limited to chaperoning, coaching, viewing and volunteering (collectively, the "Activities"), from May 26, 2019 . . .

A new Bullet point 5 of Paragraph 3 on page 2 is added to state "Crabb will exercise reasonable care and use due diligence to ensure that he does not violate this Agreement. Crabb acknowledges and fully understands that the range of penalties USAV has the authority and discretion to impose for his future violation of this Agreement (even if only an inadvertent, negligent, technical, or unintentional violation), include a lifetime suspension of his USAV membership and participation in any USAV events."

## **DECISION AND AWARD**

Based on the foregoing facts and legal analysis, the Arbitrator decides and awards:

USAV's May 17, 2019 suspension of Mr. Crabb's USAV membership and participation in any USAV or FIVB events from May 17, 2019 until the 2019 Senior World Championships is a just and proportionate penalty for his violation of the Agreement. USAV's suspension of Mr. Crabb thereafter is vacated and set aside because it is not a just and proportionate penalty.

The parties' September 27, 2017 Settlement Agreement is revised as follows:

Bullet point 2 of Paragraph 3 on page 2 is modified to state "Crabb will be ineligible to participate in or attend any activities involving junior girls (i.e., females under the age of 18 years old), including but not limited to chaperoning, coaching, viewing and volunteering (collectively, the "Activities"), from May 26, 2019 . . .

A new Bullet point 5 of Paragraph 3 on page 2 is added to state "Crabb will exercise reasonable care and use due diligence to ensure that he does not violate this Agreement. Crabb acknowledges and fully understands that the range of penalties USAV has the authority and discretion to impose for his future violation of this Agreement (even if only an inadvertent, negligent, technical, or unintentional violation), include a lifetime suspension of his USAV membership and participation in any USAV events."

The administrative fees of the AAA totaling \$1,000.00 are to be borne as incurred. The compensation of the arbitrator totaling \$2,000.00 are to be borne as incurred. The parties shall bear their own attorney's fees and/or costs associated with this arbitration. This allocation is equitable because each side prevailed in part in this arbitration proceeding.

This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding. All claims and defenses not expressly granted herein are hereby denied.



May 29, 2019

Matthew J. Mitten, Arbitrator