

UNITED STATES OLYMPIC COMMITTEE

DAVID GLEFKE)	
and)	
KELLEY FARMER,)	
)	
Complainants)	
)	
v.)	DECISION
)	ON
UNITED STATES)	MOTION TO DISMISS
EQUESTRIAN FEDERATION)	
)	
Respondent.)	August 1, 2017

I. THE PARTIES

1. David Glefke and Kelley Farmer (“Complainants”) are members of United States Equestrian Federation (“USEF”).

2. USEF is the National Governing Body (“NGB”) for the sport of equestrian in the United States, as recognized by the United States Olympic Committee (“USOC”) pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”) and Section 8 of the USOC Bylaws.

3. Complainants and USEF are collectively referred to as the “Parties”.

II. COMMENCEMENT OF PROCEEDING

4. On May 22, 2017, Complainants filed a Complaint with the USOC against USEF pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws.

5. Section 220527 of the Act and Section 10 of the USOC Bylaws collectively provide that a person who belongs to an NGB may seek to compel the NGB to comply with the requirements of Sections 220522 - 220525 of the Act and Section 8 of

the USOC Bylaws. Those provisions set forth the obligations and requirements of an NGB.

III. HEARING PANEL COMPOSITION

6. In accordance with Section 220527(a)(2) of the Act and Section 10.6 of the USOC Bylaws, USOC Chief Executive Officer, Scott Blackmun, appointed a Hearing Panel of three members for the purpose of hearing this matter. The Panel members are:

- Jim Benson, Hearing Panel Chair and USOC Board Member;
- Rich Bender, Executive Director of USA Wrestling and Member of the National Governing Body Council; and
- Emily Azevedo, Rugby Athlete and Athletes' Advisory Council Representative.

7. The Parties were provided with a list of Hearing Panel members by letter from Mr. Blackmun on May 30, 2017.

8. Rich Bender made a disclosure to the Parties on June 12, 2017, concerning potential conflicts.

9. No Party objected to the appointment of the Hearing Panel members. Accordingly, the Hearing Panel was seated without objection.

IV. LEGAL COUNSEL

10. Complainants are represented by Michael R. Romm. USEF is represented by Steven B. Smith, Brent E. Rychener, and Suzanne A. Crespo of the firm Bryan Cave LLP and by Sonja Keating, Senior Vice President and General Counsel for USEF.

V. COMPLAINT

11. The underlying controversy that gives rise to the Complaint stems from a dispute concerning a July 28, 2016, blood sample taken from the horse Unexpected. The sample allegedly indicated a positive test for gamma-aminobutyric acid ("GABA") in

excess of normal physiological levels. Unexpected was trained by Complainant Glefke and owned by Complainant Farmer. USEF held an anti-doping rule violation hearing on November 29, 2016. Complainants did not appear for the hearing. After receiving evidence, the hearing panel found that an anti-doping rule violation had been committed. As a result, the hearing panel suspended Complainants. Complainants subsequently claimed that they did not appear at the hearing because they did not receive notice of the hearing. On February 3, 2017, Complainants moved for a new hearing, which was granted by the hearing panel. The new hearing occurred on June 6-7, 2017, in which Complainants participated. The hearing panel found that Complainants had committed an anti-doping rule violation and issued suspensions.¹

12. The Complaint alleges that USEF failed to provide Complainants with proper notice of the November 29 GABA hearing in violation of Complainants' right to due process. Further, Complainants allege that the June 6-7 GABA hearing process denied them their due process rights, which they contend is supported from a review of the transcripts of the June 6-7 hearing.²

¹ Since doping matters are typically handled by the United States Anti-Doping Agency, an explanation as to why the USEF is prosecuting an anti-doping rule violation is in order. Pursuant to Article 16 of the World Anti-Doping Code, the International Federation for Equestrian, the Fédération Équestre Internationale (FEI), is granted the authority to establish and implement anti-doping rules for equine athletes. Those rules authorize National Federations (or NGBs), such as USEF, or their agents, to conduct testing and administer results management (hold hearings where a test is positive) for their National Events.

² Although the Complaint was filed on May 22, 2017, fifteen days before the June 6-7, 2017, GABA hearing, Complainants have indicated that the June 6-7 hearing also evidences a failure of USEF to comply with Sections 220522(a)(8) and (9) of the Act and a violation of their due process rights.

13. The Complaint further alleges that USEF has been depriving its members of due process and fair hearings since it began prosecuting members for GABA violations in 2012.

14. Consequently, Complainants contend that USEF is in violation of the following NGB requirements:

- a. Section 220522(a)(8) of the Act, which requires an NGB to provide “fair notice and an opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate.”
- b. Section 220502(a)(13) of the Act, which requires that an NGB provide “procedures for the prompt and equitable resolution of the grievances of its members.”
- c. Sections 220524(1) and (3) of the Act, which require an NGB “be responsible to the persons and amateur sports organizations it represents” and “keep amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions.”
- d. Due Process Checklist, as adopted by USEF in its General Rules at GR611.9.

VI. MOTION TO DISMISS

15. On June 8, 2017, USEF filed a Motion to Dismiss. The Motion is based on two grounds. Briefly stated, they are (a) that Complainants have failed to exhaust their administrative remedies or show why such exhaustion is not required and (b) that the Complaint fails to state a claim upon which relief can be granted.

16. After conferring with the Parties, the Hearing Panel set a briefing schedule and hearing date for argument on the Motion to Dismiss.

17. The Hearing Panel allowed Complainants until June 27, 2017, to respond to the Motion to Dismiss. On June 26, Complainants filed an Emergency Motion for Additional Time to File a Response. On June 27, USEF filed an Opposition to the Emergency Motion for Additional Time to File a Response. However, on June 27, 2017,

before the Hearing Panel could rule on Complainants' Emergency Motion, Complainants submitted their Response to the Motion to Dismiss. Accordingly, the Hearing Panel considered the Emergency Motion withdrawn.

18. USEF filed a Reply to the Response to Motion to Dismiss on June 30, 2017.

19. The Hearing Panel held oral argument on the Motion to Dismiss by telephone conference call on July 10, 2017.

20. On July 10, 2017, immediately following the conclusion of the hearing on the Motion to Dismiss, Complainants submitted a Supplemental Submission in Response to Panel Member Inquiry About Composition of Hearing Committee.

21. USEF submitted a Response to Complainants' Supplemental Submission on July 12, 2017.

22. Complainants filed a Reply to Response to Complainants' Supplemental Submission on July 13, 2017.

23. Counsel for the Parties presented oral argument on the Motion to Dismiss. Additionally, Gary L. Johansen, USOC Associate General Counsel and legal counsel to the Hearing Panel, Lucy Denley, USOC Senior Paralegal and liaison to the Hearing Panel and Bryan Bitzer, USOC Legal Intern participated in the hearing on the Motion to Dismiss.

24. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed the Complaint and all the papers filed in support of and in opposition to the Motion to Dismiss. The Hearing Panel also considered the oral arguments presented by the Parties.

VII. RULING

25. It is the determination of the Hearing Panel that USEF's Motion to Dismiss is granted. In making this determination, the Hearing Panel finds that Complainants have failed to exhaust their administrative remedies with USEF and have not proven by clear and convincing evidence that exhaustion of these remedies would cause unnecessary delay. Since dismissal is based on this ground, the Hearing Panel makes no ruling on USEF's contention that Complainants have failed to state a claim upon which relief can be granted.

26. All members of the Hearing Panel reviewed and approved this written Decision.

VIII. ANALYSIS

A. Basis for Motion

27. As previously stated, the Motion to Dismiss is based on two grounds.

28. First, USEF asserts that Complainants failed to exhaust their administrative remedies with USEF, as required by Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

29. Second, USEF contends that the Complaint should be dismissed pursuant to Section 10.12 of the USOC Bylaws, which provides that a complaint be dismissed if it fails to state a claim upon which relief can be granted.

B. Failure to Exhaust Administrative Remedies

30. In considering the exhaustion requirement, the Hearing Panel considered three issues raised by the Parties. First, does USEF have an administrative complaint procedure available to its members for seeking to compel USEF to comply with its

obligations under the Act and USOC Bylaws. Second, did Complainants exhaust their internal remedies pursuant to the administrative complaint procedure. Third, if not, were Complainants excused from exhausting their internal remedies.

(a) Administrative Complaint Procedure

31. Section 220522((a)(13) of the Act requires that an NGB have a procedure for the prompt and equitable resolution of grievances of its members. Without such a procedure, a member would not be able to fulfill the exhaustion requirement of Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws. *Hightower v US Bowling Congress*, Report, Decision and Recommendation, page 14 (June 8, 2017) (Bill Marolt, Glen Schorr and Han Xiao, Pnl. Mbrs.).

32. USEF, in its Motion to Dismiss, states that it has an administrative complaint procedure that allows its members to file a complaint and be heard on issues of USEF non-compliance with its obligations as an NGB.³ USEF specifically points to USEF Bylaw 704, Section 1 and USEF General Rule 602.8. Bylaw 704.1 states:

The Federation shall hear any complaint by...an individual, [or] member...which alleges that...the Federation has failed to comply with its membership requirements in the USOC.

³ USEF also asserts that Complainants have a remedy available to them as part of the GABA anti-doping hearing and appeal process. USEF provides that this process allows Complainants to raise objections concerning USEF's failure to provide for proper notice and for a fair hearing conducted in accordance with required due process standards. However, as pointed out in *Leach v. USA Track & Field, Inc.*, Decision on Motion to Dismiss, para. 38-49 (Sep. 20, 2016) (Bob Wood, Darrin Steele, and Kerry McCoy, Pnl. Mbrs.), and discussed in more detail later in this Decision, a disciplinary hearing against a member and an administrative proceeding seeking to correct an NGB's deficiencies are two different actions with two different purposes. The disciplinary hearing cannot serve as or substitute for the administrative proceeding for raising issues of non-compliance and serve as the mechanism for exhausting internal remedies as required by Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

General Rule 602.8 states:

Any member of the Federation may file a protest or charge or grievance with the Hearing Committee...alleging a violation of any provision of the Federation's Bylaws or Rules, the Amateur Sports Act of 1978 (sic), or the USOC's Constitution (sic) or By-Laws.

33. Complainants do not contest that USEF has an administrative complaint process available to its members. Rather, Complainants allege that they have exhausted their administrative remedies or to do so would be futile and result in unnecessary delay.

34. Accordingly, the Hearing Panel finds that USEF has an administrative complaint procedure that allows its members to file a complaint and be heard on issues of USEF non-compliance.

(b) Exhaustion of Internal Remedies

35. Section 220527(b) of the Act provides that a member may only file a Section 10 complaint with the USOC seeking to compel an NGB to comply with its obligations under the Act and USOC Bylaws if it has exhausted its internal remedies or shown that to do so would result in unnecessary delay.

36. USEF alleges that Complainants have not exhausted their administrative remedies.

37. USEF states that Complainants have failed to file a complaint with USEF pursuant to USEF Bylaw 704, Section 1 and USEF General Rule 602.8.

38. Complainants concede that they have not filed such a complaint.

39. However, Complainants contend that the GABA anti-doping hearing serves as the equivalent of filing a USEF Bylaw 704, Section 1 and USEF General Rule 602.8 complaint with USEF. Complainants contend that they have, in essence, alleged USEF's noncompliance with both the Act and USOC Bylaws through the course of the

GABA anti-doping hearing. They contend that by doing so they have satisfied the exhaustion requirement of Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

40. However, this proposition is expressly rejected in *Leach v. USA Track & Field, Inc.*, Decision on Motion to Dismiss (Sep. 20, 2016) (Bob Wood, Darrin Steele, and Kerry McCoy, Pnl. Mbrs.). *Leach* held at para. 44 that “[t]he conduct of an NGB in a disciplinary hearing may be used as evidence the NGB is not in compliance with the Act or USOC Bylaws, but a complainant cannot use the disciplinary proceeding itself to satisfy the administrative remedy requirement for a Section 10 complaint.”

41. A similar finding was made in *Lee v. U.S. Speedskating*, Decision on Motion to Dismiss, pages 13-14 (Sept. 1, 2016) (Anita DeFrantz, Jim Leahy, and Brian Olsen, Pnl. Mbrs.) (finding that the complainant’s previously filed grievance requesting his reinstatement did not satisfy the exhaustion requirement of Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws).

42. The precedent on this issue is clear. If a complainant has not filed a separate complaint with an NGB alleging noncompliance with the Act or USOC Bylaws, then the complainant has not exhausted his or her administrative remedies.

43. This Hearing Panel stresses that its reliance on this precedent is not arbitrary, nor is it unfounded. The requirement to pursue an administrative complaint outside of the original disciplinary hearing not only grants an NGB proper notice of the relevant allegations and an appropriate forum to have those allegations fleshed out and heard, but it also affords an NGB the opportunity to properly review its actions and resolve or correct those actions as needed. *Leach* at para. 47; *Farry v. United States*

Rowing Assn., Decision, page 18 (Jun. 29, 2007) (James McCarthy, Stacey Johnson, Robert Mitchell, Lee Todd & Mark Henderson, Pnl Mbrs.). Proper notice and a forum to review and resolve deficiencies creates an opportunity for NGBs to correct, adapt and improve. That is not the case in a disciplinary proceeding where the NGB is in effect prosecuting an alleged wrongdoing against one of its members.

44. Also, the opportunity to handle issues internally incentivizes NGBs to review their performance and effectiveness without the halting and disruptive effect of defending their actions in a Section 10 case.

45. Additionally, eliminating the exhaustion requirement most likely would have a significant impact on the number of Section 10 cases filed with the USOC. The USOC would become the de facto arbiter of each and every dispute between an NGB and its members. The burden placed on the USOC and its hearing panels could be overwhelming.

46. Accordingly, this Hearing Panel finds that Complainants have failed to exhaust the administrative remedy available to them through USEF Bylaw 704, Section 1 and USEF General Rule 602.8.

(c) Justification for Not Exhausting Administrative Remedies

47. Having found that Complainants did not exhaust their administrative remedies with USEF, the Hearing Panel must now decide, as provided for in Section 220527(b) of the Act, whether Complainants can show by clear and convincing evidence that exhausting those administrative remedies would result in unnecessary delay.

48. Complainants contend that an administrative hearing before USEF would be futile, as it would not be fair or impartial. Consequently, Complainants state that

proceeding with an administrative hearing would cause unnecessary and needless delay. Bluntly, Complainants state that requiring them to exhaust their administrative remedies would be a “waste of time.”

49. First, as evidence of this, Complainants allude to the GABA anti-doping hearing, which they contend was unfair, prejudiced against them, and “replete with examples” of wrongdoing. Complainants contend that the administrative hearing would simply yield the same result as was rendered in the GABA anti-doping hearing.

50. USEF vehemently denies that the GABA anti-doping hearing was in any way unfair, prejudiced against Complainants or replete with examples of wrongdoing. Accordingly, USEF contends that Complainants reliance on the GABA anti-doping hearing is unfounded and baseless, and provides no grounds for justifying an exception to the exhaustion requirement.

51. The Hearing Panel understands that Complainants disagree with the decision rendered by the hearing panel in the GABA anti-doping hearing, but that is not reason to excuse Complainants from complying with the exhaustion requirement of Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

52. Second, Complainants maintain that any USEF hearing panel appointed to hear their administrative complaint would be biased and predisposed to rule against them. Complainants claim that the individuals who hear USEF administrative complaints are selected from the same pool of individuals who hear anti-doping matters. Consequently, Complainants argue that the hearing panel members will not be impartial or provide them with a fair hearing.

53. In response, USEF states that the individuals who sit on their hearing panels are independent and capable of hearing Complainants claims in an unbiased and fair manner. USEF points out that its hearing panel members (a) are not employees of USEF; (b) do not receive compensation from USEF, except for reimbursement for their travel expenses (to and from hearings); (c) do not work for entities having business relationships with USEF; and (d) do not personally have business relationships with USEF. In sum, they do not have a conflict that would compromise their independence or predispose them toward USEF or against Complainants.

54. Further, USEF pledges that any administrative complaint filed by Complainants would not be heard by the same hearing panel members that heard Complainants' GABA anti-doping case.

55. In making allegations of bias, Complainants face the hurdle of presenting evidence that rises above mere conclusory statements and allegations.⁴ Complainants have not shown that they would not get a fair and impartial hearing.

56. Also, here, as in other cases where allegations were made relating to the independence and impartiality of administrative hearing panels, the Hearing Panel takes note of USEF's affirmation that its administrative hearing procedure is fair and that its panel members will be impartial. *Leach* at para. 58 ("USATF contends that its hearing panels are independent and that any hearing relating to its obligations as an NGB would be conducted in a fair and impartial manner." *Fogarty v. USA Badminton, Inc.*,

⁴ See *Leach* at para. 59 ("Other than the mere allegation, there is no verification that Complainants would not get a fair and impartial hearing...."); *Fogarty v. USA Badminton, Inc.*, Decision, page 9 (Oct. 1, 2004) (Marty Mankamyer, Brian Derwin, James R. Joy, Herb Perez, & Nancy Wightman, Pnl. Mbrs.) ("[A]lthough [Complainant] makes the general allegation...he does not provide specific information as to such bias....")

Order, page 9 (Oct. 1, 2004) (Marty Mankamyer, Brian Derwin, James R. Joy, Herb Perez, & Nancy Wightman, Pnl. Mbrs.) (“USAB assured the Hearing Panel that its Executive Committee...can provide for an impartial hearing...[and] members who are conflicted in any way are obligated to recuse themselves....”).

57. Finally, the Hearing Panel takes seriously USEF’s commitment that no panel member who heard Complainants GABA anti-doping case, will hear Complainants administrative complaint, if filed. The Section 10 Hearing Panel holds USEF to this assurance.

58. Considering the lack of specific evidence presented by Complainants and the assurances provided by USEF, the Hearing Panel is unconvinced that Complainants will not receive a fair and impartial hearing before a USEF hearing panel.

59. Accordingly, this Hearing Panel finds that Complainants have not shown, by clear and convincing evidence, that exhausting their administrative remedies with USEF would be unfair and futile, and result in unnecessary delay

C. Failure to State a Claim

60. In light of the Hearing Panel’s determination to grant USEF’s Motion to Dismiss for Complainants’ failure to exhaust their administrative remedies, it is not necessary for the Hearing Panel to address USEF’s contention that the Complaint fails to state a claim upon which relief can be granted.

IX. ORDER

61. USEF's Motion to Dismiss is granted.
62. The Section 10 Complaint is hereby dismissed.

Dated this 1st day of August, 2017.



Jim Benson, Chair
Rich Bender, Panel Member
Emily Azevedo, Panel Member