

UNITED STATES OLYMPIC COMMITTEE

KWANG JAE LEE,)	
)	
Complainant)	
)	
v.)	DECISION
)	ON
U. S. SPEEDSKATING)	MOTION TO DISMISS
)	
Respondent.)	September 1, 2016

I. THE PARTIES

1. Kwang Jae Lee (“Lee”) is a former member and coach of US Speedskating (“USS”).
2. USS is the National Governing Body (“NGB”) for the sport of Speedskating 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.

II. COMMENCEMENT OF PROCEEDING

3. On May 19, 2016, Lee filed a joint Section 9 and Section 10 Complaint with the USOC.¹ Lee titled the Complaint “Grievance and Complaint for Reinstatement of Kwang Jae Lee and Expungement of Disciplinary Record Pursuant to Sections 9 and 10 of the Bylaws of the USOC and the Ted Stevens Olympic and Amateur Sports Act.”

¹ Section 9 refers to the corresponding Section in the USOC Bylaws. The basis for Section 9 complaints is set forth in Sections 220503(8), 220505(C)(5) and 220509(a) of the Act. Section 10 also refers to the corresponding Section in the USOC Bylaws. The basis for Section 10 complaints is set out in Section 220527 of the Act.

III. HEARING PANEL APPOINTMENT

4. In accordance with Section 220527(a)(2) of the Act and Section 10 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:

Anita DeFrantz, Chair, USOC Board Member;
Jim Leahy, USA Luge Executive Director and NGBC member; and,
Brian Olsen, Biathlon athlete and member of the AAC.

5. The parties were provided with a list of Hearing Panel members by letter from Mr. Blackmun on June 7, 2016. No party objected to the appointment of the Hearing Panel members.

6. Accordingly, the Hearing Panel is seated without objection.

IV. COUNSEL

7. Lee is represented by Bruce Fein and W. Bruce Delvalle of the firm Fein & DelValle, PLLC.

8. USS is represented by Steven Smith, Brent Rychener and Suzanne Crespo of the firm Bryan Cave, LLP.

V. COMPLAINT

9. Lee's Complaint is unique because it was filed with the USOC as a joint Complaint under both Section 9 and Section 10 of the USOC Bylaws.

10. The underlying controversy that gives rise to the Complaint stems from a July 16, 2012, decision of the USS Appeals Panel to impose a lifetime ban on Lee for a disciplinary infraction of USS's Code of Conduct.²

² The USS Appeals Panel found that Lee had engaged in a sexual relationship with a 16-year-old speedskater who was visiting and training at the club at which Lee was coaching.

11. The Complaint deals exclusively with the circumstances surrounding Lee's loss of membership with USS and his lifetime ban.

12. Lee contends that his lifetime ban was improper and should be reversed, in part, because of USS's failure to comply with Section 220522(a)(8) of the Act (requiring fair notice and an opportunity for a hearing) and Section 220522(a)(13) of the Act (requiring a prompt and equitable grievance process).

13. In his Complaint, Lee seeks two remedies. First, he requests, "immediate reinstatement as a member of U.S. Speedskating in good standing, expungement of his expulsion and a commutation of his expulsion to time served."

14. Second, and in the alternative, Lee requests an order from the Hearing Panel "sustaining his Grievance or remanding it to the U.S. Speedskating Appeals Panel for a hearing that complies, among other things, with due process, fundamental fairness, and the Amateur Sports Act."

VI. MOTION TO DISMISS

15. On June 20, 2016, USS filed a Motion to Dismiss pursuant to Section 10.12 of the USOC Bylaws. The Motion is based on four grounds. Briefly stated they are: (i) the Panel does not have jurisdiction to hear the Complaint because Lee fails to state a claim on which relief can be granted, (ii) Lee failed to exhaust his available remedies before filing with the USOC, (iii) Lee's Complaint is void of facts supporting relief under Section 10 and (iv) Lee is not eligible to file a Section 10 complaint against USS because he is no longer a member, or eligible to become a member, of USS.

16. A briefing schedule and hearing date for argument on the Motion to Dismiss was set by the Hearing Panel after conferring with the parties. Lee filed an Opposition to the Motion on July 11, 2016. USS filed a Reply on July 15, 2016.

17. The Hearing Panel held oral argument on the Motion to Dismiss by telephone conference call on July 20, 2016. Bruce Fein and Bruce DelValle appeared on behalf of Lee. Brent Rychener and Suzanne Crespo appeared on behalf of USS. Also on the call were 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 Leah Cameron, USOC Legal Intern.

18. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed all of 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. All members of the Hearing Panel reviewed and approved this written Decision.

VII. RULING

19. It is the determination of the Hearing Panel that USS's Motion to Dismiss is granted. In making this determination, the Hearing Panel finds that there is no jurisdiction to hear Lee's Complaint because it fails to state a claim on which relief can be granted. Further, even if Lee were to restyle his Complaint in an attempt to overcome this deficiency, the Hearing Panel finds that Lee has not exhausted his administrative remedies. Since dismissal is based on these two grounds, the Hearing Panel makes no ruling on the other grounds for dismissal.

20. Additionally, the Hearing Panel makes the following comment. Lee filed a joint Section 9 and Section 10 Complaint. The Hearing Panel makes no ruling on the

Section 9 Complaint, in which Lee seeks to be reinstated as a member of USS, as that matter is not within the jurisdiction of the Hearing Panel. Lee is left to pursue his request for reinstatement under Section 9 as he sees fit. USS may respond to any such action as it determines appropriate.

VIII. BACKGROUND

21. The Hearing Panel has not reviewed the merits of the case surrounding the loss of membership, but simply provides a background timeline of events and procedural history for clarity purposes given the complex and unique nature of this case. A brief summary of events surrounding Lee's loss of membership follows.

22. Lee was head coach of a local skating club from May 2006 to January 2012.

23. For a period of November 2011 through January 2012, Lee allegedly had a consensual sexual relationship with a sixteen year-old speedskater who was visiting and training at the club where Lee was coaching.

24. The relationship was brought to the attention of USS, which then filed disciplinary charges against Lee. The matter was brought before USS's Appeals Panel.

25. On July 16, 2012, the Appeals Panel conducted a hearing regarding Lee's violation of USS's Code of Conduct. The Appeals Panel found that Lee had violated

USS's Code of Conduct and permanently expelled Lee from USS membership. Lee did not attend the hearing.³

26. In June 2015, Lee was invited to coach at a speedskating club (other than the one he was head coach of from May 2006 to January 2012). When USS found out about this, it notified the club that Lee was permanently expelled from USS and advised the club not to engage Lee.

27. On October 29, 2015, Lee filed a grievance with USS seeking reinstatement.⁴

28. On November 23, 2015, USS, through its outside legal counsel, responded stating, "US Speedskating declines to entertain Mr. Lee's grievance absent a showing that new evidence has been discovered that he would not and could not have known at the time of the hearing."

29. Lee filed the Section 10 Complaint with the USOC on May 19, 2016.

IX. POSITION OF THE PARTIES

30. USS and Lee make the following arguments relating to failure to state a claim on which relief can be granted and exhaustion of administrative remedies.

³ The reasons for Lee's non-attendance at the hearing are matters of contention. Lee and USS have opposing positions on whether Lee was properly served or whether, knowing of the hearing, Lee determined not to participate for other legal or personal reasons. Lee also raises a number of issues relating to the manner in which the complaint was brought, the evidence presented at the hearing, and the procedures followed by the Appeals Panel. Finally, Lee and USS disagree on whether or not Lee was properly informed of his expulsion from USS.

⁴ As is discussed later in this Decision, Lee contends that this filing fulfilled his exhaustion requirement under Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

A. Failure to State a Claim Upon which Relief can be Granted

31. USS makes two points in connection with its position that the Complaint fails to state a valid claim. First, USS states that Lee fails to make any claim falling under the purview of Section 10 that would give the Panel jurisdiction. Second, USS contends that the relief sought by Lee is not available under Section 10.

32. In support of the first point, USS asserts that Lee's Complaint is a masked attempt at a second hearing for his lifetime ban imposed by the Appeals Panel in 2012. USS argues that because the Complaint challenges the determination made by the Appeals Panel, it does not measure up to a Section 10 complaint as it does not with any particularity allege that USS is not fulfilling its NGB responsibilities.

33. USS also asserts that a Section 10 complaint is inappropriate for a coach who seeks to challenge an independent disciplinary action by an NGB. If allowed, USS warns that this will open the floodgates for others to utilize Section 10 for eligibility matters that are more appropriately resolved under a Section 9 complaint or under the NGB's internal grievance process.

34. Essentially, USS argues that the Hearing Panel has no jurisdiction to hear this matter because Lee makes no valid claim under Section 10 relating to USS's non-compliance.

35. In support of its second point, USS states that the Hearing Panel has no authority to grant the relief that Lee requests, which is membership reinstatement or a new hearing. USS points out that the remedies available under Section 10 are to place an NGB on probation or to revoke an NGB's recognition as the national governing body for its sport, neither of which are sought in the Complaint.

36. Lee responds that his Complaint contains ample allegations of fact to support a Section 10 complaint. Although these allegations pertain to USS's disciplinary action against Lee, he argues that they also are evidence of USS's non-compliance with Section 8 of the USOC Bylaws and Sections 220522 through 220525 of the Act.

37. Further, Lee contends that the Hearing Panel should imply the appropriate relief requested by way of the Section 10 filing itself.

B. Failure to Exhaust Administrative Remedies

38. USS contends that Lee's October 29, 2015, grievance filed with USS does not satisfy the administrative remedies requirement of Section 220527(b) of the Act or Section 10.11 of the USOC Bylaws. Instead, USS points out that the grievance "was a request for a belated appeal or rehearing of the original disciplinary matter, and for a reduction of Mr. Lee's lifetime ban."

39. Lee asserts that he has exhausted all of the internal remedies available to him. First, he contends that his October 2015 grievance meets the exhaustion requirement. Lee states that instead of accepting the grievance and granting him a hearing, USS rejected the grievance.

40. Second, Lee states that he could not have exhausted any internal remedies relating to his lifetime ban earlier because he did not know of the ban until early August of 2015.

41. Thus, Lee claims that there are no further avenues to pursue.

X. ANALYSIS

A. General Comment

42. The Hearing Panel questions Lee's decision to file a joint Section 9 and Section 10 Complaint. The grounds for Section 9 and Section 10 complaints are very different, each with a unique set of procedures and criteria that apply. Lee's decision to file a joint complaint unnecessary muddles the issues and makes it difficult to determine which portions of his Complaint are relevant Section 10 issues and which are not.

43. As stated, Section 9 and Section 10 complaints serve two entirely different purposes. A Section 9 complaint allows an individual to resolve participation disputes. A Section 10 complaint is a compliance proceeding involving an NGB.⁵

44. This is important for many reasons, not the least of which is that Section 10 requires a complainant to exhaust his or her administrative remedies. No such requirement exists for Section 9 proceedings.

45. Section 9 and Section 10 proceedings also have different remedies. Section 9 remedies address participation rights. Section 10 remedies address NGB compliance.

46. An individual cannot simply try to cover all of his or her bases by filing a joint Section 9 and Section 10 complaint, as happened here, and then rely on the Hearing Panel to lace the arguments together and determine which portions of the complaint apply to which proceeding.

⁵ USS Bylaws also provide two distinct procedures, one for disciplinary actions and one for claims that USS is not fulfilling its NGB obligations. The former is governed by USS Bylaws Articles 14.4 – 14.7. The latter is governed by USS Bylaws Articles 14.8 – 14.10.

B. Failure to State a Claim Upon which Relief can be Granted

47. The question presented in a motion to dismiss for failure to state a claim is whether the complaint sets forth a legally sufficient claim for relief. Further, a hearing panel must assume that all the allegations of the complaint are true and taken in the light most favorable to complainant.

48. Section 220527(a) of the Act provides that “an amateur sports organization or person that belongs to or is eligible to belong to a national governing body may seek to compel the national governing body to comply with sections 220522, 220524, and 220525” of the Act by filing a written complaint with the USOC.

49. Section 10.1 of the USOC Bylaws state “[a]ny amateur sports organization or person that belongs to, or is eligible to belong to, an NGB or PSO may seek to compel such NGB or PSO to comply with the requirements of Section 8 of these Bylaws and Sections 220522-220525 of the Act.”⁶

50. Lee’s Complaint fails in this regard because it does not seek NGB compliance, and thus does not properly allege or state a violation under Section 10. The Complaint is directed at Lee’s loss of membership, and is an attempt to challenge the underlying proceeding that determined that Lee had violated USS’s Code of Conduct. The request for relief seeks Lee’s reinstatement or a new hearing.

⁶ Section 10.2 also requires that the complaint shall set forth the following:

- the names and addresses of the parties;
- the jurisdictional basis of the complaint;
- the efforts made to exhaust available remedies, or if such remedies have not been exhausted, the grounds upon which the complainant alleges that exhaustion would result in unnecessary delay;
- the alleged grounds of non-compliance;
- the supporting evidence or documentation forming the basis of the complaint; and
- the relief sought.

51. Further, as is required by Section 10.2 of the USOC Bylaws, a Section 10 complaint must allege with particularity the “alleged grounds of non-compliance.” Lee’s Complaint does not fulfill this requirement. Rather, Lee’s allegations of impropriety by USS are an attempt to overturn the Appeals Panel’s determination that Lee should be stripped of his membership with USS. Lee’s Complaint is about his loss of membership. It is not a claim about USS’s non-compliance of its obligations as an NGB.

52. Lee makes an attempt to set forth Section 10 non-compliance allegations against USS for the first time in his Opposition to the Motion to Dismiss. Many of these allegations are based on the November 23, 2015, letter from USS legal counsel.⁷

53. Although Section 10 complaints are not governed by strict procedural rules as may be applied in court proceedings, basic legal principles still apply. Lee’s effort to expand his Complaint by asserting additional violations and alleging entirely new facts to support those violations in his Opposition to Motion to Dismiss, does not remedy the deficiencies of his Complaint.

54. Further, Lee states that other claims of non-compliance and evidence supporting those claims will be obtained during discovery. That may or may not be the case. However, that is not how these matters are conducted. One may not file a Section 10 complaint upon the hope that some issue of non-compliance will be uncovered during discovery.

⁷ First, he contends that the letter is devoid of any indication that the grievance was referred to a hearing panel in compliance with USS’s grievance procedures. Second, Lee states that the letter is evidence that USS has delegated matters to its legal counsel, and thereby USS “does not autonomously govern the sport of Speedskating and is restrained from independent decisions relating to grievances” in contravention of Section 220522(a)(5) of the Act. Third, he indicates that the letter is indicative of excessive legal expenditures on behalf of USS, which is in derogation of USS’s responsibilities as an NGB.

55. Also, the Hearing Panel is not inclined to assume that Lee's Complaint is proper simply because he includes "Section 10" in the title. If Lee intends to contest USS's fulfillment of its obligations of an NGB that must be the purpose of the Complaint.

56. Furthermore, Lee does not clarify how a Section 10 remedy, even if requested, which Lee does not, would ultimately resolve Lee's disciplinary issues. A Section 10 Hearing Panel is tasked with determining only if an NGB is either fulfilling or not fulfilling its capabilities as an NGB. Even if the Hearing Panel found USS non-compliant and placed USS on probation, that would not reinstate Lee as a member of USS or provide him the right to a rehearing.

57. Despite Lee's arguments, it is clear to the Hearing Panel that the heart of this Complaint and the ultimate resolution sought by Lee is reinstatement to USS. That is not the purpose of a Section 10 proceeding, nor a possible remedy. *See Smith v. USA Dance Inc.*, Decision Nov. 16, 2009, Barbara Smith, Fred Benjamin and Jon McCullough, Pnl. Mbrs., (holding that a Section 10 complaint was not the appropriate forum for resolving complainant's objection to his removal from the board of directors).

58. In summary, a Section 10 complaint is designed to ensure that an NGB complies, on a broad organizational level, with the requirements of Sections 220522 – 220525 of the Act and Section 8 of the USOC Bylaws. It is not designed to provide a duplicative avenue of appeal of an individual disciplinary action, and it does not provide a Hearing Panel with the authority to determine eligibility of individual members.

59. Accordingly, Lee's Complaint fails to make any allegations falling within the purview of Section 10, or request any remedy, that would give the Hearing Panel jurisdiction over the matter.

C. Failure to Exhaust Administrative Remedies

60. Lee must show that he has exhausted administrative remedies within USS in relation to a Section 10 claim.

61. Section 220527(b) of the Act provides that, “[a]n organization or person may file a complaint under subsection (a) of this section only after exhausting all available remedies within the national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.”

62. Section 10.11 of the USOC Bylaws states that, “[t]he complainant may file a complaint under this Section 10 only after exhausting all available remedies with the NGB or PSO for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.”

63. Lee’s primary argument is that his October 29, 2015, filing meets the exhaustion requirement.

64. The Hearing Panel is not persuaded by this argument. The October Grievance, similar to the Section 10 Complaint, requests that Lee be reinstated as a member or at least obtain a rehearing of the July 2012 Appeals Hearing. It is not a complaint aimed at correcting USS’s deficiencies, seeking as a remedy that USS amend its Bylaws or procedures or apply them in a way that complies with the Act and USOC Bylaws.

65. Simply stated, Lee misunderstands the difference between a complaint aimed at regaining participation and one alleging NGB non-compliance. He attempts to

get the Hearing Panel to accept his October 29, 2015, filing against USS as a complaint seeking compliance, when in fact it is a complaint seeking reinstatement of Lee.

66. USS Bylaws Articles 14.8 – 14.10 set forth clear requirements and procedures for one to follow when filing a grievance against USS alleging it has violated its own rules, the Act or the USOC Bylaws. The Hearing Panel finds no evidence that Lee filed any such claim. This avenue may be available to Lee, but he has not pursued it.

67. Accordingly, Lee has not exhausted his administrative remedies as is required by Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

XI. ORDER

68. USS's Motion to Dismiss is granted for the reason that Lee has not stated a claim on which relief may be granted and for his failure to exhaust his administrative remedies.

69. Lee's Section 10 Complaint is hereby dismissed.

Dated this 1st day of September, 2016.



Anita DeFrantz, Chair
Jim Leahy, Panel Member
Brian Olsen, Panel Member