

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the matter of the Arbitration between

Re: 01-15-0005-7406

Phillip Yun, Thomas Rahimi, TJ Curry, and Connor Wilson, **Claimants**

and

USA Taekwondo, Inc., **Respondent**

and

Affected Athletes: Charlotte Craig, Logan Gerick, Lauren Hamon, Jaysen Ishida, Terrence Jennings, Kelsey Junious, Stephen Lambdin, Samantha Leidel, Cheyenne Lewis, Mark Lopez, Steven Lopez, Paige McPherson and Sanaz Shahbazi

AWARD OF ARBITRATOR

I, the undersigned arbitrator (the **Arbitrator**), having been designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic and Amateur Sports Act (the **Act**) and Section 9 of the United States Olympic Committee Bylaws, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on an expedited basis on December 18, 2015 by telephone, with Claimants, Respondent and the Participating Affected Athletes or their representatives as set forth below, offering argument and evidence, do hereby, AWARD as follows:

A. PROCEDURAL BACKGROUND

1. This matter arises as a complaint by the Claimants described below based on the Athlete Selection Procedures for the 2016 Olympic Games adopted and promulgated by Respondent, USA Taekwondo on August 25, 2015 (the **Procedures**) and specifically relates to the USA Taekwondo Olympic Team Trials scheduled for February 2-7, 2016 (the **Olympic Team Trials**):
 - Timothy “TJ” Curry (**Mr. Curry**) competes in the -80 kilogram weight class and is currently ranked thirty-sixth (36th) in the World Taekwondo Federation (**WTF**) Olympic Ranking system for the -80 kilogram weight class. He is also a current National Team member.
 - Phillip Yun (**Mr. Yun**) is currently ranked forty-ninth (49th) in the WTF Olympic Ranking system for the +80 kilogram weight class. Mr. Yun is a current National Team member. Yun won the 2015 National Team Trials.

- Thomas Rahimi (**Mr. Rahimi**) competes in the -68 and -80 kilogram weight class and who is currently ranked fifty-second (52nd) in the WTF Olympic Ranking system for the -80 kilogram weight class. Mr. Rahimi was a member of the 2014 National Team.
 - Connor Wilson (**Mr. Wilson**) competes in the -80 kilogram weight class and won gold in the 2015 Taekwondo National Championships. Mr. Wilson was a member of the 2014 Junior National Team and won first in the USA Taekwondo Junior National Team Trials.
2. Under the Procedures, all the Claimants will be excluded from the Olympic Team Trials because none is currently ranked in the top-31 of the WTF Olympic Ranking system.
 3. On November 19, 2015, the Claimants filed with the United States Olympic Committee (USOC) their complaint based on an alleged denial of the opportunity to compete under USOC Bylaws Section 9. The complaint was referred to the American Arbitration Association, this Arbitrator was appointed December 4, 2015 and a preliminary hearing was held with the Claimants' counsel, Michael Straubel of Valparaiso University Law Clinic and Respondent's counsel, Stephen Hess of Sherman & Howard, LLC on December 9, 2015.
 4. By mutual agreement of the Claimants and Respondent, the Affected Athletes listed above were identified on December 11, 2015 and they were provided with notice of this arbitration by email on the same day by Patrick Wentland, Director of High Performance, USA Taekwondo, as follows:

“Dear Athlete:

I am writing on behalf of USA Taekwondo. Please take notice that Philip Yun, Thomas Rahimi, T.J. Curry, and Connor Wilson have initiated an arbitration proceeding against USA Taekwondo to challenge the validity of USA Taekwondo's Athlete Selection Procedures for the 2016 Olympic Games. Your rights as an athlete and your participation in the Olympic Team Trials for USA Taekwondo may be affected by this arbitration, and you therefore have the right to participate as a party, which means you can bring your own claims and be involved in the arbitration hearing in the same manner as other parties. If you elect to become a party, you must provide written notice to the American Arbitration Association, which can be accomplished by replying to this email, with a copy to all of the people on this e-mail no later than **12:00 Midnight EDT, Tuesday, December 15, 2015**. If you do not elect to participate as a party, you will still be bound by any decision rendered in the arbitration. An arbitration hearing has been set to be held by telephone commencing at **9:00 a.m. Pacific time on Friday, December 18, 2015** before the Arbitrator, Ms. Maidie Oliveau. “

5. As of the deadline established in this notice, December 15, 2015, the Participating Affected Athletes (Jaysen Ishida, Stephen Lambdin, Cheyenne Lewis, Steven Lopez, Paige McPherson, Sanaz Shahbazi) had all notified the American Arbitration Association of their desire to participate in this arbitration. On December 16, 2015, Mr. Jennings

withdrew his previous request to participate in the arbitration and on the same day Mr. Greene entered his appearance on behalf of Mr. Lambdin.

6. Mr. Hess facilitated distribution of the Claimants' and USA Taekwondo's briefs and exhibits to all the parties on December 16, 2015.
7. On December 16, 2015, the Arbitrator sent by email to the Claimants, the Respondent and all Affected Athletes an acknowledgment of receipt of those who requested to participate and included the following notice:

“All athletes have been provided:

1. the Complaint filed by Philip Yun, Thomas Rahimi, T.J. Curry, and Connor Wilson (the “Claimants”)
2. the Report of Preliminary Hearing and Scheduling Order
3. the Notice of Hearing on Friday December 18, 2015, to begin at 9:00 a.m.

The athletes other than the Participating Affected Athletes and the Claimants listed on this email remain “Affected Athletes”.

In order to provide everyone with the opportunity to be heard, the Participating Affected Athletes can be represented by counsel or another representative during the telephonic hearing and they may file briefs (or provide evidence) in accordance with the schedule in the Report of Preliminary Hearing and Scheduling Order. The Participating Affected Athletes will be heard and may present their case after the Claimants and USA Taekwondo have been heard at each phase of the hearing (i.e. opening statements, evidence and closing statements). Only arguments and evidence supplementary to that provided by the Claimants and USA Taekwondo is necessary to be submitted. In order to complete the hearing on a timely basis, please prepare accordingly.

There is no obligation by any of the Affected Athletes to attend the hearing in order to benefit from the decision which will be the outcome of this hearing. All Affected Athletes will be bound by that decision.”

8. On December 17, 2015, the AAA sent by email to the Participating Affected Athletes the Notice of Hearing and confirmation of the Arbitrator.
9. The telephonic hearing was held on December 18, 2015, with the following parties attending: (1) for Claimants: Michael Straubel, Valparaiso University Sports Law Clinic, and legal interns, Maison Haines, Ryan Henke, Alex Mitrani, Jeremy Owens, Claire Szpara and Phillip Wiehe, and the Claimants: Messrs. Curry, Rahimi, Wilson and Yun; (2) for Respondent: Stephen Hess of Sherman & Howard LLC, John Long, CEO of USA Taekwondo, Patrick Wentland, High Performance Director of USA Taekwondo and Devin Johnson, Chair of the Board of USA Taekwondo; (3) Paul Greene of Global Sports Associates, representing Affected Athlete Stephen Lambdin who also attended; (4) Affected Athletes Sanaz Shahbazi, Paige McPherson and her coach, Juan Moreno, Jaysen Ishida, Jason Lewis representing Cheyenne Lewis, and Jean Lopez representing Steven

Lopez; (5) as observers from the USOC, Kacie Wallace USOC Athlete Ombudsman and Sara Clark, Assistant Athlete Ombudsman and Gary Johansen, USOC Associate General Counsel, NGB Governance and Athlete Affairs.

10. Also attending the hearing were the following witnesses for Claimants: Arlene Limas and Brian Singer, both taekwondo elite level coaches, and the Claimants; testifying on behalf of Respondent: Stephanie Isley, USOC Sport Performance Manager, Patrick Wentland, USA Taekwondo Sport Performance Director, Bruce McCutcheon, elite coach; for Stephen Lambdin: Mr. Lambdin and his peak performance coach, Tim Thackery. For the Affected Athletes, Mr. Jason Lewis testified and called Patrice Remarcke, national team coach as a witness; Sanaz Shahbazi, Paige McPherson and Jean Lopez all testified or provided closing arguments.
11. Claimants' request for relief is that the current Procedures for the Olympic Team Trials be set aside and replaced with new procedures, which are set out in the alternative:
 - a. An open tournament for those not in the top-31 of the WTF Olympic Ranking could be held, with the top two in each weight category advancing to the Olympic Team Trials. This open tournament could be held on the site and at the time of the U.S. Open, now scheduled for February 2, 2016. Then, the Olympic Team Trials could be held two weeks later. The participants in the Olympic Team Trials would be those ranked in the top-31 and the top two from the earlier open tournament. Or
 - b. The results of tournaments held in 2015 that were attended by the largest number of active American Taekwondo athletes should be used as a substitute for the qualifying tournaments used in the 2008 and 2012 procedures. Those tournaments would be the U.S. Open (advancing the top 2 Americans) and the Senior Nationals (advancing the champion).
12. USA Taekwondo's reply is to request that Claimants' request be denied.
13. Some Affected Athletes support Claimants' request and others request that Claimants' request be denied.

B. BURDEN OF PROOF

14. In a case arising under Section 9 of the USOC Bylaws, claimants have the burden of proving their claims by a preponderance of the evidence. *Tibbs v. United States Paralympics*, AAA Case No. 71 190 E 00406 12 (August 28, 2012) at 14; *Beckom v. U.S. Bobsled and Skeleton Federation*, AAA Case No. 77 190 E 00105 JENF (February 12, 2010); *Nieto v. USA Track & Field*, AAA Case No. 77 190 E 00275 08 JENF (July 19, 2008); *Ruckman v. United States Rowing Ass 'n*, AAA Case No. 77 190 E 00189 08 JENF (May 29, 2008); *Cameron Booth v. United States Rowing Ass 'n*, AAA Case No. 30 190 259 07 (March 16, 2008); *Gault v. United States Bobsled & Skeleton Federation*, AAA Case No. 72 E 190 0002 92 (January 11, 1992). Thus, the burden of proving that the Procedures do not comply with the Act is to be borne by Claimants.

C. STANDARD OF REVIEW

15. In such a facial challenge to the validity of selection procedures, arbitrators apply a *de novo* standard of review.
16. Where the adoption of specific procedures requires the exercise of discretion by the national governing body (**NGB**), the standard to be applied is whether the NGB applied its procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF at 5 (August 21, 2011) If Respondent's Procedures have no rational basis, i.e. are unreasonable, arbitrary or capricious, they will not meet the Act's requirements.
17. The Arbitrator's role is not to determine whether the NGB "chose the best process for selecting teams" *Cameron Booth* at 19, or to substitute lay judgment for the expert professional judgment of USA Taekwondo in establishing selection criteria.

D. JURISDICTION

18. The Arbitrator has jurisdiction over this dispute pursuant to the Act, because this is a controversy involving Claimants' opportunity to participate in the Olympic Games, which is required to be resolved by final and binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. 36 U.S.C. §§220522(a)(4)(B). Section 9.1 of the USOC Bylaws prohibits an NGB from denying or threatening to deny "any amateur athlete the opportunity to participate in the Olympic Games." Section 9.7 of the USOC Bylaws provides that "[i]f the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration." Sections 9.7 and 9.9 of the USOC Bylaws permit the arbitration proceeding to be expedited.

E. APPLICABLE LAW

19. The Act, 36 U.S.C.A. § 220523(a)(7) provides: "a national governing body may . . . designate individuals and teams to represent the United States in international amateur athletic competition . . .
20. The Act's requirements for an NGB's selection procedures are listed in the Act itself, the USOC Bylaws and the USOC Athlete and Staff Selection Procedures Instruction Manual (the **Manual**) which reflects those requirements (page 6) as follows.

An NGB should carefully design selection procedures that:

- Comply with the Ted Stevens Olympic and Amateur Sports Act and USOC Bylaws.
- Are in accordance with the Qualification System and/or Technical Manual as defined by the IOC, IPC, PASO, IF or Continental Federation (CF).
- Are performance-oriented.

- Are fair, equitable and clearly written.
 - Use objective based criteria or discretionary/subjective criteria that are supported by objective measures.
 - Allow for selection of the most competitive team.
 - Are not retroactive.
 - Do not require an athlete to sign a commercial terms agreement as a condition to compete.
 - Do not have eligibility criteria that are more restrictive than the appropriate IF.
 - Fill all available start positions/quota places.
21. USOC Bylaws Section 8.8.1 provide that Athlete representatives shall equal at least 20% of those NGB committees that are “Designated Committees” which are defined to mean, among other things, panels that prepare, approve or implement programs in the selection of Olympic Team members including athletes, coaches, administrators and sports staff. The qualifications of such Athlete representatives are specified in Section 8.8.2 of the USOC Bylaws.
22. According to the WTF Competition rules, athletes seventeen years or older are eligible to compete in the WT’s Continental Qualification Tournaments (**Continentials**), and there are no ranking requirements to compete in the Continentals. Claimants repeatedly make the statement that eligible athletes that are seventeen years old can only obtain WTF ranking points during the year they will be turning eighteen. There is no citation for this proposition. USA Taekwondo did not address this claim. WTF Competition Rules and Interpretation, Article 4, Section 1.5 provide that a WTF athlete can compete in WTF sanctioned events when he turns seventeen. The WTF Ranking Bylaw does not seem to restrict the age at which ranking points can be earned.
23. WTF Olympic Ranking is one method of earning quotas for the 2016 Olympic Games. Athletes earn WTF Olympic Ranking points based on their results from any “G” ranked WTF-sanctioned event including “G” ranked Opens, Grand Prix events, World Championships and Pan American Games. Points began accruing from the time of the 2012 Olympic Games in London through the Grand Prix Final in December 2015. (Procedures, Section 1.2.2(b))
24. The Procedures provide the qualifications for the Olympic Team Trials to be a top-31 WTF Olympic Ranking (that reflects the results of the 2015 Grand Prix Final). (Procedures, Section 1.3.b)

F. FINDINGS OF FACT

i. *The WTF System*

25. The WTF is the International Federation (**IF**) designated by the International Olympic Committee to govern the sport of Taekwondo. The WTF sanctions and rates international tournaments for purposes of assigning points by “G” category.
26. The WTF Olympic Ranking system has been in place since 2013. As time passes, an athlete’s ranking points diminish in value, and eventually “expire.” When the WTF ranks athletes for the purposes set out below, as a consequence, an athlete’s rank is determined over the course of several years, with the oldest points assigned less value than the current competition year.
27. The sport of taekwondo has changed tremendously over the last four years: featuring new equipment and electronic scoring system, causing the athletes to change their style and techniques. Since the events now use the WTF Olympic Ranking system, the athletes know the importance of those ranking points and they have been chasing those points to qualify for the Olympic Games. Under this system, athletes are required to go to 10-12 international competitions per year to achieve sufficient ranking points, whereas they used to go to 3 or 4. In addition, there are half the weight categories in the Olympic Games than contested in other tournaments, so there are fewer spots for which the athletes may qualify.

ii. *WTF Olympic Quota Procedures*

28. Sixteen athletes are accepted in the Olympic Games in each of the four weight categories in taekwondo for each gender. Six of those athletes are entered by name from the six highest-ranking athletes according to the WTF Olympic Ranking. One athlete is entered either as a Host Country or Tripartite Committee entry. The remaining nine spots are allocated to countries (as opposed to entry by name) whose athletes prevail at their respective Continentals (two spots each from The Americas, Europe, Africa, Asia, and one from Oceania).
29. The United States can qualify no more than two athletes of each gender. Jackie Galloway of the United States is entitled to entry by name by virtue of being ranked in the top-6 in the WTF Olympic Ranking. That means that USA Taekwondo must choose one weight category in which it will try to qualify another female spot at the Continentals.
30. No American male finished in the top-6 in the WTF Olympic Ranking. That means that USA Taekwondo must select two weight categories in which it will try to qualify Olympic spots for the United States at the Continentals. With respect to each of those weight categories, USA Taekwondo may send only one athlete to compete at the Continentals.

31. On December 16, 2015, USA Taekwondo announced that it had selected the following weight categories in accordance with the Procedures and these weight categories are not controversial in this proceeding:

Female:	Olympic Welterweight	Over 57 Kg and not exceeding 67 Kg
Male:	Olympic Welterweight	Over 68 Kg and not exceeding 80 Kg
Male:	Olympic Heavyweight	Over 80 Kg

32. An athlete who qualifies by name (such as Jackie Galloway) can be replaced if she is physically unable to compete, only by another U.S. athlete in the top-20 in the WTF Olympic Ranking. That WTF rule maintains the medal-capable level of the athletes who are chosen for their performance. Under the WTF system, an athlete who is nominated to fill a quota earned through the Continentals bears no ranking requirement, as those spots are distributed to maintain geographic diversity primarily.

iii. *Previous Athlete Selection Procedures*

33. As part of its status as the NGB for Taekwondo, USA Taekwondo has the exclusive authority within the United States to sanction events that are involved in international competitions and to nominate athletes to the USOC for international games such as the Olympic Games.
34. With respect to the selection procedures used for the 2008 and 2012 Olympic Games, before the WTF Olympic Ranking system had been adopted, USA Taekwondo had a multi phase or “open” process whereby waivers were granted for national team members and medalists at specified events. This also allowed for non-international level athletes and seventeen/eighteen year olds to qualify through a grass roots process escalating up to the specified national events. After the procedures for those Olympic Games were published, it was still possible to attempt to attain eligibility to the Olympic Team Trials through some specified events. The selection procedures used by USA Taekwondo for the most recent Pan Am Games however, since the new WTF Olympic Ranking system was adopted, were based strictly on those rankings. Only the top 60 WTF ranked athletes qualified.

iv. *Procedures Committee*

35. USA Taekwondo High Performance Director, Patrick Wentland, has been conducting weekly telephone calls with the elite level taekwondo coaches since December 2014. He brought to this group the proposed selection procedures starting in late February 2015 and circulated two to three rough drafts of the proposals. They met telephonically and sometimes others attended these calls, such as the CEO of USA Taekwondo, USOC personnel and Lynda Laurin, the Athlete Advisory Council (AAC) representative for USA Taekwondo. Coach Limas participated in these calls for several weeks and then stopped participating as she felt her input was not accepted. Coach Singer participated in 3 or 4 calls around March 2015.

36. The disagreement among the coaches was whether to have an “open” type procedure allowing athletes with specific qualifications to enter the process to qualify for the Olympic Team Trials even if they were not highly ranked, which would involve multiple phases; or to qualify the athletes strictly based on their rankings, i.e. a single phase process. All kinds of points of view were expressed on these calls.
37. USOC was invited to participate with the coaches on the weekly calls and interacted with the USA Taekwondo reviews of the draft selection procedures through August 2015. They were reviewed with the USOC Sport Performance team, Gary Johansen of USOC Legal and the USOC Athlete Ombudsman’s office. Stephanie Isley of USOC Sport Performance testified that almost every sport has some kind of threshold an athlete must meet in order to qualify for selection.
38. USA Taekwondo has a standing Committee composed of its CEO, Bruce Harris, the national coach, Patrice Remarcke, Patrick Wentland and the athlete representative, Nia Abdallah. This Committee reviews and adopts all USA Taekwondo selectin procedures. All parties agreed that Ms. Abdallah fulfilled the requirements of the USOC Bylaws as Athlete representative. According to “USA Taekwondo National Cadet Team Participates in 1st Cadet World Championships,” <http://www.teamusa.org/USA-Taekwondo/Features/2014/July/25/USA-Taekwondo-National-Cadet-Team-Participates-in-1st-Cadet-World-Championships>, Ms. Abdallah participated as a Coach in the 2014 Cadet World Championships.
39. Originally, Lynda Laurin as the AAC representative for taekwondo had been on this standing Committee, but she decided she wanted to compete in the Olympic Team Trials so she recused herself and she contacted Ms. Abdallah to replace her. Thereafter there were a few times when she tried to have Ms. Abdallah removed from the Committee as she changed her mind. She had requested to sign the Procedures along with filing a letter of objection but this was not allowed and in the end only Ms. Abdallah signed the final Procedures. Mr. Remarcke participated in the development of the Procedures and agreed with the usage of the WTF Olympic Ranking for purposes of qualification though he did object to the process for selection of weight categories. Ultimately, though he did participate in the development of the Procedures, he was not asked to sign them based on customary practice not to include the national coach due to the potential for the appearance of a conflict of interest.

v. 2016 Procedures

40. There was general agreement among coach McCutcheon and all the athletes who testified on this subject, that competing internationally as required to get WTF ranking points was expensive and grueling. The issue of injury was discussed throughout, both in the context of the risk of getting injured while competing in so many tournaments and also the risk of injury during the Olympic Team Trials or any phased process leading to the Olympic Team Trials.
41. USA Taekwondo published its Procedures for the upcoming 2016 Olympic Games on August 25, 2015. Under the Procedures, athletes can qualify for the Olympic Games in

their respective weight category if ranked among the top-6 in the WTF Olympic Ranking, which simply reflects the WTF requirements. The Procedures also invite to the Olympic Team Trials athletes who are top-31 in the WTF Olympic Ranking after the Grand Prix 2015, with those qualified through the Olympic Team Trials then to move on to compete in the Continentals to qualify for the Olympic Games.

42. A seventeen year old who is eligible to attempt to qualify for the Continentals under WTF rules (i.e. not dependent on his WTF ranking), under the Procedures is treated no differently than other athletes and has to have competed at a sufficient number of WTF sanctioned events to achieve the necessary WTF ranking.
43. The Procedures specify in Section 14 that athletes who have questions regarding their opportunity to compete that are not answered by USA Taekwondo may contact the USOC Athlete Ombudsman. There was no request from any of the Claimants or Affected Athletes after the Procedures were published in August until the filing of the Complaint with the USOC in November.
44. Rumors among the elite coaches started to spread as early as the beginning of 2013 that WTF Olympic Ranking points would be used for selecting qualifiers for the Olympic Team Trials. Mr. McCutcheon testified that he was not surprised when the Procedures were published except at the top-31 ranking as there had been an expectation that a higher ranking (maybe 20) would be required. Mr. Thackery had the same reaction. Based on the Pan Am Games qualifying cutoff being a top 60 ranking, he expected the Procedures to be strictly based on WTF ranking points with a higher cutoff, because it was for the Olympic Games. Mr. Lopez also testified that different from past Olympic Games where he was coach, the elite coaches understood it would be in the best interest of all the athletes to do whatever they could to get as many points as possible to put themselves in the best position to qualify for the Olympic Games or the Olympic Team Trials.

vi. *The Parties*

45. Since the time WTF published its Qualification System for the 2016 Olympic Games (the **Qualification System**) in early 2014, Mr. Curry was trying to earn a top-6 ranking. Mr. Curry competed in 3 tournaments since August 26, 2015, when the Procedures were published but was unable to earn sufficient points to be ranked in the top-31. Mr. Yun did not compete in any WTF point earning tournaments from August 26 until the end of the year due to injury. He is familiar with the 2012 Olympic Games selection procedures and expected them to be the same for 2016 and thereby include national team members or Pan Am Games medalists, which he is, as eligible for the Olympic Team Trials. He testified that since 2014, he has exerted every effort to accumulate WTF points to get to be ranked in the top-6 but was still hoping when that did not happen to qualify for the Olympic Team Trials. Mr. Rahimi competed in two tournaments after the Procedures were published but did not accumulate a sufficient number of points to be ranked in the top-31. He has been balancing both school and his sport and he would have competed in two more tournaments had he known before August of the criteria in the Procedures. His coach had told him that based on the Procedures, he should compete in more tournaments but he was unable due to financial and school considerations. He did not place as well as

hoped in the tournaments in which he did compete after the Procedures were announced. Mr. Wilson was born on August 7, 1997, and when he turned seventeen on August 7, 2014, he could compete in WTF sanctioned events (WTF Competition Rules and Interpretation, Article 4, Section 1.5). He had 0 points in 2015, and needed 80.84 points to achieve a top-31 WTF Olympic Ranking. Mr. Wilson would have planned differently in 2014 had he known about the Procedures, but has been focusing on school and was not able to travel internationally on his own due to his age. Mr. Wilson thought based on past Olympic Games selection procedures that winning the Nationals would qualify him for the Olympic Team Trials.

46. All of the Claimants were aware that in April 2014, WTF published its Qualifying System granting qualification to the Olympic Games to the top-6 in their ranking. From that time, all athletes knew to aim for WTF points to achieve a guaranteed qualification. Qualifying through the Olympic Team Trials and then the Continentals was always a secondary avenue to qualify for the Olympic Games versus achieving a top-6 ranking.
47. Of the Affected Athletes, the following are ranked in the top-31 of the WTF Olympic Ranking and thus are eligible to compete in the Olympic Team Trials in their respective weight categories: Paige McPherson, Charlotte Craig, Cheyenne Lewis and Lauren Hamon for the females; Stephen Lambdin, Steven Lopez, Mark Lopez, Jaysen Ishida and Terrence Jennings for the males.
48. Stephen Lambdin who is ranked 15 in the WTF Olympic Ranking in his weight category testified that he made many decisions sacrificing family and finances to compete consistently, including competing with injuries, inconvenient and expensive travel, and quitting his job, all so he could compete at the necessary international events and compile the ranking points necessary to qualify for the Olympic Team Trials. He had expected the Procedures to limit the number qualified to those in the top-15 because word had spread that a top ranking would be required.
49. Sanaz Shahbazi testified that she has been to four Olympic Trials and fully expected this one to be more open. She has had difficulty accumulating the necessary points because so few international events actually ended up meeting the WTF minimum requirements to offer ranking points and she did not have sufficient time to achieve the necessary ranking between August and the 2015 Grand Prix.

G. ARGUMENTS

CLAIMANTS

50. Claimants argue that the Procedures are facially invalid because they:
 - (1) were retroactive as the athletes did not know until late August 2015 they had to be in the top-31 of the WTF Ranking in order to qualify for the Olympic Team Trials, at which point there was not enough time nor enough tournaments left to raise an athlete's ranking;
 - (2) were created without sufficient athlete representation, and the Athlete representative had a disqualifying conflict of interest; and

(3) exclude seventeen-eighteen year old athletes who would otherwise be eligible under the WTF requirements.

i. *Retroactivity*

51. The Procedures base selection on events which took place prior to the publication of the Procedures, and are therefore retroactive. “Retroactive” is defined by Merriam-Webster as, “extending in scope or effect to a prior time or to conditions that existed or originated in the past.” The Manual states on page 6 that, “NGBs...should carefully design Selection Procedures that: ...are not retroactive.”
52. USA Taekwondo as the NGB has the responsibility to the athletes and others to make the selection rules clear, transparent, and easy to apply without confusion. *Viola v. USA Diving Inc.* AAA 30 190 00828 05 (Aug. 1, 2005) ¶ 25. The athletes need to understand what level and history of performance they need to achieve in order to be selected to the Olympic team. *Id.*
53. The Claimants did not know the WTF Olympic Ranking System would be used and that they had to be ranked in the top-31 until late August 2015. By then, most of the international “G” tournaments had already occurred and athletes had made decisions regarding their training and travel that inhibited them from being able to make the top-31. The WTF Ranking System had not been used for previous Olympic Games to qualify for the Olympic Team Trials. Athletes such as Mr. Curry, Mr. Yun, and Mr. Rahimi would have competed in “G” events earlier in the year had they known they would have to be in the top-31 in order to compete in the Olympic Team Trials.
54. USA Taekwondo should have created and published its Procedures, at the very least, prior to the year 2015. Had USA Taekwondo released these rules in 2014, athletes would have been put on notice that they would need to attend enough events in 2015 to raise their Olympic Ranking to be in the top-31. By the time the Procedures were published, there were only ten G-1 to G-2 events spread out all over the world, around the same time, making it impossible for athletes to attend all of them. By late August/early September, athletes had already missed over half of 2015’s opportunities to raise their WTF Olympic Ranking.

ii. *Athlete Representative Participation*

55. USA Taekwondo violated the requirements of the Act and the USOC Bylaws when it assembled a selection procedures drafting committee that was not made up of 20% Athlete representatives, and the USA Taekwondo selected Athlete representative had a disqualifying conflict of interest.
56. The Procedures were drafted and finalized by Patrick Wentland based on the suggestions and input from the weekly conference call members. These email threads show that this was in fact the committee who drafted the Procedures. Throughout the process, people were added to the committee but none of those added were Athlete representatives.

Therefore, this procedures selection committee was in violation of both the Act and USOC Bylaws when they did not meet the 20% Athlete representation rule.

57. USA Taekwondo violated its own Code of Ethics when it appointed Ms. Abdallah to be an Athlete representative participating on the procedures selection committee, because she is also a member of the USA Taekwondo national team coaching staff. Section 5.0 of USA Taekwondo Code of Ethics defines a conflict of interest as any personal or financial relationship that could influence or be perceived to influence a person's objectivity when representing or conducting business for, or on behalf of USA Taekwondo. Ms. Abdallah should not qualify as an Athlete representative because she is also a USA Taekwondo coach, and as such subject to be influenced by USA Taekwondo as her current employer. Ms. Abdallah's conflict of interest would disqualify her from being considered an Athlete representative and would mean USA Taekwondo did not adhere to USOC Bylaw 8.8.1; thus the committee was improperly formed and the Procedures are invalid.
58. The athlete or athletes who are elected as representative(s) should have meaningful participation in the work of the committees and in the organization. Ms. Abdallah was not involved in all of the drafts. Her minimal involvement should not be considered meaningful and thus it would appear that USA Taekwondo's procedures selection committee did not have at least twenty percent (20%) Athlete representation at all times.

iii. Exclusion of WTF Qualified Competitors

59. The WTF minimum eligibility requirements allow seventeen year old athletes to compete in the Olympic Games and Continentals. The Procedures however allow only those ranked in the top-31 into the Olympic Team Trials. Under the process and rules of the WTF Olympic Ranking system, it is impossible for a taekwondo athlete who is newly eligible by age, and who is nevertheless of world class and Olympic caliber, such as Mr. Wilson, to be ranked in the top-31 by December 31, 2015. Athletes who are seventeen years old can start to compete in the WTF sanctioned events. Upper level "G" tournaments, where more points are available, are reserved for the higher ranked athletes or Senior National team members. There are only a limited number of "G1" or "G2" tournaments available in the USA. In addition, international "G" tournaments overlap in schedule dates with USA tournaments thereby forcing athletes to pick which tournaments to attend.
60. Even if an athlete properly schedules to compete in a lot of tournaments, the athlete will need to acquire at least ninety-six (96) points to be ranked in the top-31. To acquire this many points, an athlete would have to win at least ten (10) "G1" events or five (5) "G2" events, or a combination thereof. With these kinds of requirements, there are not enough tournaments for athletes who turn seventeen-eighteen years old to compete in to acquire the necessary points to be ranked in the top-31.
61. Mr. Wilson, now 18 years old as of August 2015, only started to accumulate points during 2015 by competing in the "G" 2015 U.S. Open where he was eliminated in the quarterfinals. Mr. Wilson also won the 2015 Senior Nationals in the -80 kilogram weight class. Compared to athletes who have been accumulating ranking points for years, Mr.

Wilson was not able to accumulate enough points to be ranked in the top-31 in the WTF Olympic Ranking. Thus, Mr. Wilson was excluded from the Olympic selection because he was seventeen years old and not able to accumulate points to be ranked within the top-31 in the WTF Olympic Ranking.

62. USA Taekwondo's eligibility standards to compete in the Olympic Team Trials and Continentals based on Olympic Ranking is not fair nor open to athletes seventeen years of age because these athletes are not given the opportunity to accumulate points for rankings and thus will be excluded from competing. Therefore, the qualification standards in the Procedures are more restrictive than those of WTF. The standards exclude a category of eligible athletes and therefore are in violation of the Act and of the Manual's requirements that an NGB not have eligibility criteria related to participation in the Olympic Games that are more restrictive than those of the appropriate IF.

RESPONDENT

i. The Act Requirements

63. USA Taekwondo argues that the Procedures comply with the Act's requirements.
64. Although USA Taekwondo has the authority to select athletes to represent the country in protected competitions, its authority does not come with unbridled discretion. Rather, one function of the Act is to inject as much objectivity and accountability into the selection process as was consistent with the promotion of Olympic and international medal-winning capability. As a consequence, an NGB is required as part of its delegation of authority from Congress, to establish a written procedure, approved by the USOC, to fairly select athletes and team officials for the Olympic, Paralympic or Pan American Games teams, and, upon approval, timely disseminate such procedure to the athletes and team officials. (USOC Bylaws, § 8.7(f))
65. USA Taekwondo's mission in populating an Olympic team is to win medals in the pinnacle of international competitions and not to offer an Olympic spot to athletes as a reward for notable national competition or merely to "represent" the country with the expectation of a tepid result.
66. As such, USA Taekwondo restricts entry into the Olympic Team Trials to those individuals who have demonstrated medal capability in international competition. The measure of that capability is the WTF Olympic Ranking system, and USA Taekwondo believes that the adoption of the international competition ranking system is the best measure of probable success in international competition. USA Taekwondo, after many discussions among the selection committee, adopted the top-31 as the cutoff.

ii. Procedures

67. Claimants suggest they each of them could have made the top-31 cut if only they had known that USA Taekwondo would use the WTF Olympic Ranking system to qualify athletes for the Olympic Team Trials. However, elite athletes knew that WTF points were vital to establishing international competitiveness and that WTF points were absolutely

essential to qualifying the country for automatic places, and for qualifying individuals for entry by name in the Olympic Games. None of the athletes at issue made any meaningful effort to earn WTF points once the Procedures were announced nor did they make notable efforts at earning points before the Procedures were announced. Finally, none of the athletes at issue stood a reasonable chance of earning spots even if they had endeavored to do so and demonstrated an interest in qualifying for the Olympic Games.

68. On the other hand, those athletes who are top-31 athletes demonstrated their understanding of the value of international points, but more important, of the value of international competition. They went to great lengths to establish themselves as elite athletes worthy of consideration for Olympic berths.
69. As a matter of equity, USA Taekwondo notes that none of the Claimants in this case made any effort to file a Section 9 proceeding when they knew that WTF Olympic Ranking would be used. They waited three months, failed to compete and/or to earn points, then filed an action in the hope that the arbitration would give them a spot in the Olympic Team Trials that they could not earn on the mat.

iii. Athlete Representative Participation

70. Claimants allege that the Procedures were drafted by a committee whose members included fewer than 20% athletes in violation of USOC Bylaws and the Act. The actual selection Committee had four members, one of whom was an Athlete, as published in the Procedures themselves. Although other people were consulted during the drafting process, such as the coaches on the weekly calls in February-March 2015 (including very substantial interaction with the USOC), they were not members of the Committee empowered to draft the procedures. In addition, if the USOC had understood an Athlete representative not to have participated, it is certain they would have raised red flags.

iv. Retroactivity

71. Finally, the USOC was intimately involved in the drafting and review of the selection process, and ultimately approved the publication of the final Procedures. The Procedures were not just drafted by the Selection Committee but also reviewed by several experts at the USOC who understand the meaning of retroactive selection procedures. These experts did not raise any red flags. The Procedures have to be read in context. In order not to be “retroactive” as promulgated by the Claimants, the Procedures would have had to be adopted early in 2013. This reading of “retroactive” would also put into question other sports’ selection procedures which use rankings for qualifications.

v. Exercise of Discretion

72. USA Taekwondo reasonably exercised its discretion in deciding on the best measure and best way to populate the US Olympic team. This is not something for the Arbitrator to determine but rather for the experts to decide. The concern about an Olympic Team Trials which is open and could lead to injury of medal capable athletes while competing against more rested non-medal capable athletes is not an abuse of discretion. The use of the WTF points is a matter of discretion, which was reasonably exercised. The WTF Ranking

points system had been in place several years, the athletes knew they had to accumulate points from that time.

AFFECTED ATHLETES

i. *Stephen Lambdin*

73. The athletes all had a fair opportunity to compete for WTF Ranking points. All the athletes had the same opportunity and the choices they made were all based on the same costs and hardships. None of the Claimants put in the time or spent the money required to make the Olympic Team Trials and have not shown there was no rational basis for the Procedures as adopted by USA Taekwondo.

ii. *Sanaz Shahbazi*

74. The Procedures were published too late. There were not sufficient tournaments after the Procedures were announced that actually had sufficient entries for her to have the opportunity to increase her WTF ranking. That is not fair.

iii. *Cheyenne Lewis*

75. The Procedures need to be more open and allow for a tournament for all qualified athletes to compete, not just those who have been able to travel and earn a ranking. Even though Ms. Lewis has already qualified by virtue of reaching a top-31 ranking, she views the use of WTF Ranking points as denying all athletes the opportunity to participate in the Olympic Games. The WTF Ranking points are not necessarily indicative of who the best fighters are. One can earn ranking points by traveling around the world and acquire ranking points without even competing. This requires financial resources not available to all. The point system was developed by WTF to take politics out of sport, but the system has fallen short of its goal. USA Taekwondo should develop its own system.

76. There could be very objective selection procedures that allow athletes' performances not just ranking points to qualify them for Olympic Team Trials. Mr. Lewis proposed an open fight off consisting of those athletes currently ranked 32 to 60 – three division winners will join the athletes ranked 7 to 31 and then compete in a round robin format.

iv. *Steven Lopez and Paige McPherson*

77. All athletes knew the system, they knew the WTF rankings were critical. All athletes had an equal opportunity to compete and earn ranking points. There is no reason to change that now.

H. ANALYSIS

78. Claimants argue that the Procedures violate as a matter of law the Act and Manual requirements in three ways. Respondent argues that the Procedures if not invalid on their

face because of violations of the Act should be reviewed based on whether USA Taekwondo abused its discretion in adopting them.

i. *Retroactivity*

79. Claimants argue that on their face, as a matter of law, the Procedures do not comply with the Act and the Manual implementing the Act, specifically because they are retroactive and the USA Taekwondo athletes were not given timely notice. At the same time, Claimants produced evidence that two of the Claimants tried to raise their rankings after the Procedures were published. Having failed, the Claimants then filed the complaint. There is an illogic to accepting the Procedures when published, failing to qualify under their requirements and then claiming the Procedures are as a matter of law invalid. Disregarding that, analysis of the argument regarding retroactivity also fails. Claimants accept that rankings are a valid measurement tool for qualification for the Olympic Team Trials and they claim that had the Procedures been issued earlier, when there was sufficient time for the Claimants to adjust their schedules, then they would not have been retroactive. Nevertheless, even if published earlier, the Procedures would have retained the retroactive characteristic at issue, taking into account ranking points previously earned onto which points the Claimants would then attempt to add additional points. That is just what some of the Claimants did in this case.
80. In addition, the Claimants point to the USA Triathlon selection procedures as being timely and not retroactive when in fact those procedures use the exact same metric (ranking in the top 140 of several point systems) as an initial qualification bar. The difference the Claimants point to is in the timeliness because the triathlon athletes have a year from the publication of their procedures to achieve that ranking and the equivalent of the Olympic Team Trials for triathlon are held five months after the publication of the triathlon procedures. Nevertheless, the ranking points are cumulative and therefore retroactive in the same way as the taekwondo Procedures are. It is just a question of when the announcement of selection procedures is made, not whether they are retroactive by taking into consideration past events which accumulated ranking points.
81. Points are used throughout sport to rank athletes within their competition structures. These are not newly imposed on a retroactive basis when declared as used in selection procedures. Though certainly there is an aspect “extending in scope ... to conditions that ... existed in the past”, that is not the sole aspect of using WTF Ranking points in the Procedures. As in all sports, there is a cumulative effect of past performance, including membership on the National Team which would also have been “retroactive” though Claimants argue for including that as a basis for eligibility for the Olympic Team Trials. The choice by USA Taekwondo of using only the WTF Ranking points was not impermissibly “retroactive” under the circumstances as all the USA Taekwondo athletes had notice beginning in 2013 that the WTF points were a key aspect of the sport, all had heard these would be used and all had had the opportunity to compete in tournaments to earn those points. In addition, they had continuing opportunity to earn those points after the Procedures were announced. One athlete did in fact achieve a top-31 ranking after the Procedures were published.

82. As set forth in *Viola*, the athletes need to understand what level and history of performance they need to achieve in order to be selected to the Olympic team. The Procedures are very clear about this and since there was no confusion about how the WTF awards ranking points, all athletes clearly understood from 2013 on “what level and history of performance they need to achieve in order to be selected to the Olympic team” as far as the top-6 ranking for entry by name. The additional opportunity to qualify for the Olympic Team Trials based on those same ranking points, based on the athletes’ already all attempting to qualify for a top 6 ranking is not “retroactive” in the sense intended by the Act, which would be criteria that involve new measurement metrics or an event that is in the past and not currently used by the athletes in question.
83. The fact that USOC experts reviewed and approved the Procedures is one of the factors to be considered in evaluating whether the Procedures comply with the Act. This can not however be controlling. It nevertheless carries considerable weight as the USOC team who reviewed these Procedures are all well aware of the requirements of the Act as set forth in the Manual and they are considered to be well qualified to evaluate selection procedures independently. Their review and approval along with the above analysis is an additional factor weighed by this Arbitrator.

ii. *Athlete Representation*

84. Claimants argue that on their face as a matter of law the Procedures were not produced in accordance with the requirements of the Act because there was not 20% participation by a qualified Athlete representative as defined in the Act. Claimants did not meet their burden of proof that Ms. Abdallah’s participation was not in accordance with the requirements of the Act. She was qualified in accordance with the terms of the Act; she signed the Procedures; none of the athletes attempted to remove her from the Committee (other than Ms. Laurin thereby evidencing that the role was meaningful and was that of the required Athlete representative); nor did she recuse herself. There was no evidence produced by Claimants, other than her previous role as a 2014 national cadet coach. There was no evidence produced that her participation in the actual Committee was not meaningful.
85. The fact of USA Taekwondo consultation with the coaches and others during the February/March 2015 period was not convincing that these people were acting as the “committee” itself. It is worthwhile for USA Taekwondo, as the NGB, to consult with the experts in developing its Procedures. USA Taekwondo consulted appropriately with both the coaches group and the USOC team. None of these people were members of the Committee. They did contribute to the Procedures but that did not invalidate the actual Committee’s formal structure, work and the Procedures it produced with Ms. Abdallah’s apparent participation and concurrence.

iii. *Exclusion of WTF Qualified Competitors*

86. With respect to the Act requirement that the Procedures not include eligibility criteria that are more restrictive than the appropriate international federation’s, the WTF specifies that athletes seventeen years or older are eligible to compete in the Continentals, and there are

no ranking requirements to compete in the Continentals. These are base requirements for eligibility but do not mean that every seventeen year old member of WTF will qualify to compete in the Continentals. By their very nature, the Continentals are not open, instead each national federation (such as USA Taekwondo) has to decide specifically how to fill its team roster to compete in the Continentals. Simply being of a certain age is not sufficient in and of itself to allow an athlete to enter the Continentals just as any taekwondo athlete in the U.S. can not simply enter the Continentals. There logically are further restricting factors. Restricting factors appear throughout the WTF rules and requirements for its “G” tournaments and for entry into the Continentals and the Olympic Games.

87. The Procedures do not restrict these younger athletes per se, in that they do not have “eligibility requirements” for them specifically that are more restrictive than the WTF rules. Instead, the Claimants argue, these athletes are unable to ultimately qualify to be selected by USA Taekwondo because of their age or at least it is very difficult to do so. Respondent did not address this aspect of the Procedures in its arguments but from the evidence of Mr. Wilson, he would have had to decide very early in his eligibility for senior competition (i.e. in 2014) strategically to accumulate points as best he could once eligible to compete at the WTF tournaments and he was free to do so. Had he started down this road earlier, he might have accumulated enough points to be ranked in the top-31. There was no reason to wait until the Procedures were announced. In addition, the age factors into the accumulation of ranking points in a somewhat random way, based on when an athlete’s birthday is. How this may fit into the various opportunities an athlete has as he was aging and earning his way into the WTF competition structure is one of many strategic aspects that go into earning a ranking. That factor is not an eligibility requirement in the Procedures. The Procedures have the effect of making it more difficult to be eligible for the Olympic Team Trials, but are not exclusively impacting seventeen/eighteen year olds or excluding them altogether. Thus, applying these facts, the Procedures do not as a matter of law include eligibility criteria that are more restrictive than the WTF’s.

iv. *Exercise of Discretion*

88. Since the Procedures are not invalid as a matter of law, based on a *de novo* review of the Procedures as set forth above, and considering the arguments of the various Affected Athletes who simply felt they were not fair or the opportunities to achieve the top-31 ranking were too limited, a further review of the Procedures based on whether USA Taekwondo abused its discretion in adopting them is required. The standard to be applied is whether the NGB applied its procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the Claimants or Affected Athletes, and/or violated applicable federal or state laws. Based on the analysis above, there is no evidence to show that USA Taekwondo applied its procedures inconsistently. All athletes were subject to the same requirements. There is no showing of bad faith. There were disagreements among the various constituents about the specifics of the selection criteria to be used but there was no bad faith or bias involved in the actual criteria ultimately adopted. As stated above, the Procedures do not violate applicable federal law and no state laws were raised as being violated by any party.

89. It is not up to this Arbitrator to determine whether the Procedures use the best possible way to select the members of the Olympic team, but rather to evaluate the process USA Taekwondo chose and determine whether it acted rationally and in accordance with the Act in developing and adopting them. There is no evidence that it did not do so.
90. Thus, the Procedures as adopted are both valid under applicable law and were adopted appropriately.

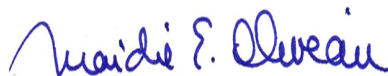
I. ALLOCATION OF ARBITRATION FEES AND COSTS

91. Claimants and Respondent each paid half of the arbitration fees. Claimants paid the filing fee of \$850. Claimants requested that the fees it paid be reimbursed by USA Taekwondo. Under AAA Commercial Rules Section R-50, the Arbitrator has discretion to assess and award such fees and costs in the final award.
92. In determining whether to shift the allocation of these fees and costs, as Arbitrator, I look at the conduct that gave rise to the demand for arbitration in this case which was USA Taekwondo's process of adoption of the Procedures and their publication. Based on the facts of this case, weighing the relative equities and the conduct of the parties in this matter, it is noted that Respondent acted in good faith, following the guidance of the USOC, consulting its constituents and adopting objective criteria for selection to its Olympic Team Trials which complied with the Act's requirements. There is therefore no basis to reallocate the arbitration fees in this case.

J. DECISION

I therefore rule as follows:

1. Claimants' claim and request for relief are denied.
2. The parties shall bear their own attorney's fees and costs associated with this arbitration.
3. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted are hereby denied.



Maidie E. Oliveau
Sole Arbitrator

Dated: December 23, 2015
Revised January 7, 2016