



DECISION of the FEI TRIBUNAL

dated 25 May 2018

Human Doping Case 2017 – 03 JENNIE BRANNIGAN

Athlete/FEI ID/NF: Jennie Brannigan/10013055/USA

Event: CIC3* - Ocala-Reddick FL (USA)

Date: 16 – 20 November 2017

Prohibited Substances: Amfetamine, Methylphenidate, Ritalinic Acid

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, chair

Ms. Constance Popineau, member

Ms. Harveen Thauli, member

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Articles of the Statutes/Regulations:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, effective 1 January 2012, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (Part I – 3.) ("**IRs**").

FEI Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("**ADRHA**").

The World Anti-Doping Code - International Standard – Prohibited List – January 2017 ("**WADA Prohibited List**").

2. Athlete: Ms. Jennie Brannigan, represented by Mr. Howard L. Jacobs of Law Offices of Howard L. Jacobs, Westlake Village, CA, USA.



3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

ADRHA Scope: "These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events.

Unless the FEI Sport Rules provide otherwise, to be eligible for participation in FEI events, an Athlete must be registered with the FEI and/or a registered member of a FEI National Federation. The National Federation must guarantee that all registered international Athletes accept the Statutes, Regulations and Rules of the FEI, including these FEI Anti-Doping Rules.

Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, the following Athletes shall be considered to be International-Level Athletes for purposes of these Anti-Doping Rules, and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes (as regards Testing but also as regards TUEs, whereabouts information, results management, and appeals) shall apply to such Athletes who:

- (a) are registered with the FEI; and/or
- (b) participate in an International Event."

ADRHA Art. 7.10.1: "Agreement between Parties

At any time during the results management process the Athlete or other Person against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and agree with the FEI on the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the FEI Tribunal, the final agreement shall state the full reasons for any period of Ineligibility agreed, including (if applicable), a justification for why the flexibility in Sanction was applied. Such agreement shall be considered as a decision for the case and will be



reported to the parties with a right to appeal under Article 13.2.3 as provided in Article 14.2 and published as provided in Article 14.3.2.”

ADRHA Art. 10.2: “Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substances or Prohibited Methods

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

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

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the FEI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.”

ADRHA Art. 10.5.2: “Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.”

ADRHA Art. 10.11.2: “Timely Admission

Where the Athlete or other Person promptly (which, in all events for an Athlete, means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule



violation by the FEI, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.

This Article shall not apply where the period of Ineligibility has already been reduced under Article 10.6.3.”

ADRHA APPENDIX 1 – DEFINITIONS:

"Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person’s degree of Fault include, for example, the Athlete’s or other Person’s experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

"No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

"No Significant Fault or Negligence: The Athlete or other Person 's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

III. DECISION

1. Parties

- 1.1 The athlete, Ms. Jennie Brannigan (the "**Athlete**" or "**Ms. Brannigan**"), is an eventing rider for the United States, administered by the US National Federation (the "**USA-NF**"), and registered with the FEI under FEI ID: 10013055.
- 1.2 The Fédération Equestre Internationale (the "**FEI**" and together with the Athlete, the "**Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, and Para-Equestrian).

2. Proceedings

On 16 May 2018, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the *Human Doping Case 2017 – 03 JENNIE BRANNIGAN*, and on 17 May 2018 the FEI submitted the (signed) Agreement (together with the Case Summary and the Full Reasoning for the Agreement) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.10.1 of the ADRHA.

I – Case Summary (as provided to the Tribunal by the Parties as part of the Agreement referred to in Article 3 below)

- "3.1 The *Athlete* took part at the CIC3* in Ocala-Reddick, Florida in the USA, from 16 to 20 November 2017 (the "Event"). As a member of the USA Equestrian Federation (the "USEF NF"), the latter being a member of the FEI, the Athlete was bound by the ADRHA Rules.
- 3.2 The Athlete was selected for testing on 18 November 2017. (Annex 1) The resulting samples were transported to the WADA Accredited Sports Medicine Research & Testing Laboratory in Salt Lake City in Utah, USA ("SMRTL") for analysis.
- 3.3 By notification letter dated 21 December 2017 the FEI informed Ms. Jennie Brannigan and the USEF NF of an alleged violation by Ms. Jennie Brannigan of Article 2.1 (*The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*) of the ADRHA Rules and that, in accordance with Article 7.9.1 of the ADRHA Rules, a Provisional Suspension had been imposed on her following



- (i) the Adverse Analytical finding of for a Prohibited Substance that is not a Specified Substance, in the Athlete's A sample.
- 3.4 *Amfetamine* is listed in class S6.a "Stimulants" of Prohibited Substances and is considered a "Non-Specified Substance" under the 2017 WADA Prohibited List. Amfetamine is prohibited in competition. Methylphenidate and its metabolite Ritalinic Acid are listed in class S6.b Stimulants, and considered "Specified Substances". A positive finding for Amfetamine, Methylphenidate and Ritalinic Acid in an Athlete's Sample constitutes a *prima facie* ADRHA Rule violation.
- 3.5 In the Notification Letter of 21 December 2017, the Athlete was informed that she had the right to request the B Sample to be analysed. The Athlete did not request the B Sample analysis. According to Art. 7.3 of the ADRHA Rules the right to promptly request the B sample analysis has been given and by failing such request the B sample analysis is deemed waived.
- 3.6 The Athlete applied for a Retroactive Therapeutic Use Exemption ("TUE"), for the medication taken at the time of the Event, which was rejected on 15 March 2018. The Athlete further also applied for a Prospective TUE which was approved on 9 March 2018. (Annex 2)
- 3.7 The Athlete submitted the following information on 19 March 2018:
- 3.8 Ms. Brannigan had used Concerta and Vyvanse to treat her ADHD symptoms as well as depression (her Concerta and Wellbutrin use are declared on her Doping Control Form). On 24 February 2018, Ms. Brannigan submitted a comprehensive TUE application for the use of both Concerta and Vyvanse. That TUE Application (i) provided comprehensive documentation of Ms. Brannigan's ADHD diagnosis; (ii) provided an explanation of Ms. Brannigan's request to use Concerta and Vyvanse as therapeutic treatment for her ADHD symptoms; and (iii) provided documentation of Ms. Brannigan's prior concussion history, which at times makes her forgetful and impulsive.
- 3.9 On 9 March 2018, the FEI granted Ms. Brannigan's TUE request for the following medication usage: (i) Methylphenidate (Concerta), 27mg, oral, once per day; and (ii) Lisdexamfetamine (Vyvanse), 40mg, oral, once per day. See TUE Committee Decision, enclosed herewith. The TUE is effective for two years, from 9 March 2018 through 9 March 2020.
- 3.10 In relation to no significant fault or negligence, the following factors



support a sanction at the lowest end of this range:

- a) Ms. Brannigan has minimal experience with anti-doping, having never previously been drug tested, and having never previously submitted a TUE application.
- b) Ms. Brannigan's positive test was caused by her use of medications for which she has a valid medical prescription and for which she has provided comprehensive medical documentation.
- c) Ms. Brannigan has struggled with depression, attention issues, as well as ADHD symptoms for her entire life (as they are quite prevalent in her family history), but did not seek help through medication until she sustained head injuries / concussions in the past two years.
- d) Ms. Brannigan was initially treated with Wellbutrin (which is not prohibited in-competition or out-of-competition) following a concussion, and was told that Wellbutrin would help with both her depression and her attention issues. It was only after the Wellbutrin did not resolve her issues that Ms. Brannigan's doctor prescribed Concerta and Vyvanse to her.
- e) Ms. Brannigan's use of these medications was unrelated to her sport performance, but rather, was to treat her ADHD symptoms as well as depression.f) Ms. Brannigan promptly admitted her anti-doping rule violation, promptly provided an explanation as to the cause of her positive test, and waived the testing of her "B" sample.
- g) Ms. Brannigan has always been a strong supporter of anti-doping, and has herself told her own students the importance of the ant-doping movement.
- h) Ms. Brannigan is willing to speak to other equestrian athletes about the need to be vigilant with respect to the anti-doping rules."

II – Full Reasoning for the Agreement (as provided to the Tribunal by the Parties as part of the Agreement referred to in Article 3 below)

"4.1 According to Article 10.2 of the ADRHA Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, four years where the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. If Article 10.2.1 does not apply, the period of Ineligibility shall be two years. A fine of up to CHF 15,000 shall also be imposed and

appropriate legal costs.

- 4.2 Article 10.4 of the ADRHA Rules states: *"If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated."*
- 4.3 Article 10.5 of the ADRHA Rules states *"If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years."*
- 4.4 Based on the evidence and documentation supplied by the Athlete (as described in Section 3 above), the FEI has evaluated whether or not Articles 10.4 and 10.5 of the ADRHA Rules are applicable. The FEI has considered that the Athlete has admitted the use of medications that led to the Adverse Analytical Finding and that the Athlete now has a Prospective TUE for the substances found in her sample at the Event. Hence, the FEI is satisfied that the requirement of establishing how the substance entered her system has been fulfilled.
- 4.5 The FEI has proceeded to evaluate the level of Fault and Negligence of the Athlete. The FEI is of the opinion that Article 10.4 No Fault or Negligence cannot be applied in a case where the Athlete has an obligation to have a TUE for her medical condition, but has not applied for such a TUE. It is the Athlete's responsibility to be aware of the rules and to apply for a TUE before the competition, and by not doing so, is somehow negligent. The FEI is however satisfied that the Athlete had demonstrated that she bore No Significant Fault or Negligence since she had no intention to dope and also now has received a Prospective TUE for the very same substances that she tested positive for at the Event. This is fully supported by the facts as summarized at paragraph 3.10 above, and by the following:
- 4.6 The same favourable factors identified in Stewart v. FIM (CAS 2015/A/3876), at para. 77, apply here:
 - a) The substances were medically prescribed to Ms. Brannigan;

- b) The prescribing doctors did not alert her to the possibility of an anti-doping rule violation as a result of taking the substances;
 - c) Ms. Brannigan obtained a TUE after the event which showed that she had a valid therapeutic reason for use of the substances and was not (and did not try to) gain an unfair competitive advantage from the use of the substances;
 - d) Ms. Brannigan received limited anti-doping education.
- 4.7 Many of the factors in Stewart, at para.78-79 as weighing against Mr. Stewart, can be distinguished in this case
- a) Ms. Brannigan is not as experienced as was Mr. Stewart;
 - b) Ms. Brannigan – unlike Mr. Stewart – did not have the resources of a trainer and an agent;
 - c) Unlike Mr. Stewart, Ms. Brannigan did not deny regularly using medicine or drugs.
 - d) Other tribunals have also held that depression is a factor that can lead to a reduction in a sanction. See, e.g., USADA v. Cosby, at p. 26 [*“the panel is of the opinion that Ms. Cosby’s judgment was adversely affected by depression and that thus she bears less responsibility than normal for what happened to her”*]; and FA v. Livermore, at par. 23-26 [citing Lewis & Taylor, *Sport: Law and Practice* (3rd Ed., par. C.2.248: *“the CAS has shown a willingness in appropriate cases to impose a lesser sanction where the athlete’s failure to meet the standards expected of him was due in part ... [to] The fact that his judgment was impaired by illness or extreme stress*); and Vlasov v. ATP Tour (CAS 2005/A/873).
 - e) Other tribunals have also held that lack of anti-doping education is a factor that can lead to a reduction in a sanction. See, e.g., WADA v. USADA and Thompson (CAS 2008/A/1490), at para. 8.21.
- 4.8 Therefore the FEI is satisfied that the Athlete bears No Significant Fault or Negligence for the anti-doping rule violation.
- 4.9 The FEI is satisfied that the criteria for the application of Article 10.5 of the ADRHA Rules had been met in that (i) the Athlete has established how the Prohibited Substances entered her system, (ii) the Athlete has demonstrated that she bore No Significant Fault or Negligence and (iii) the circumstances of the case shows that the athlete had no intention to dope and that she has a prospective TUE for her medical condition and that, therefore, the otherwise applicable period of Ineligibility (i.e. four years) should be reduced to one (1)



year. Further a fine of 1 500 CHF should be imposed on the Athlete, and the Disqualification of the results at the Event in accordance with Article 9 and Article 11 of the ADRHA Rules should apply.”

3. Agreement between Parties

On 17 May 2018, the Parties reached the following Agreement, based on the facts as detailed above:

*** Quote***

- 5.1 All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the FEI Anti-Doping Rules for Human Athletes (“ADRHA Rules”).
- 5.2 In the matter of the Adverse Analytical Finding related to the samples, which were collected from “), Ms. Jennie Brannigan at the CIC3* in Ocala-Reddick, Florida in the USA, from 16 to 20 November 2017 (the “Event”), Ms. Jennie Brannigan (the “Athlete”) and the Fédération Equestre Internationale (the “FEI” and together with the Athlete, the “Parties”) agree, in accordance with Article 7.10.1 (*Agreement between Parties*) of the ADRHA Rules, on the following:
 - 1) The **Presence of the Non-Specified Substance Amfetamine in the Athlete’s sample** constitutes a violation of Article 2.1 of the ADRHA Rules.
 - 2) **Ineligibility Period:**
The Parties agree that the prerequisites for Article 10.5.2 of the ADRHA Rules (*Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be one (1) year, starting from the date of sample collection, namely on the 18 November 2017.
 - 3) **Disqualification of Results:**
In accordance with Articles 9 and 11 of the ADRHA Rules, all the results achieved by the Athlete at the Event are disqualified, including forfeiture of medals, points and prizes.
 - 4) **Education Requirements:**
Ms. Jennie Brannigan is to support the FEI in its anti-doping campaign and to actively engage in Athlete education around human anti-



doping. In detail, she agrees to be featured in a testimony for the FEI education material, at a mutually agreed time, or at some other mutually agreed location. Additionally, she has to either, follow and complete an anti-doping education course such as WADA's ALPHA or equivalent, or an education course provided by USADA and/or by US Equestrian. These education conditions shall be fulfilled within one year from the final decision of the FEI Tribunal.

5) **Full Settlement and Resolution:**

This agreement resolves and settles all outstanding matters between the FEI and the Athlete, Ms. Jennie Brannigan. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

7) **Fine and Legal Costs:**

A fine of 1 500 CHF shall be imposed on the Athlete. Each of the Parties shall bear their own legal costs.

8) **Right of Appeal:**

This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 13.2 of the ADRHA Rules.

9) **Public Disclosure:**

All final decisions of the FEI Tribunal are published on the FEI website.

End Quote

4. Jurisdiction

- 4.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the ADRHA.
- 4.2 As member of the USA-NF, the latter being a member of the FEI, and in accordance with the scope of the ADRHA, the Athlete was bound by the ADRHA.
- 4.3 Further, Article 7.10.1 of the ADRHA allows for agreements between parties.

- 4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

5. Approval of Agreement

- 5.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal finds no grounds to object to or disapprove of the terms of the Agreement and is satisfied the Agreement constitutes a *bona fide* settlement of the present case.
- 5.2 In accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to comply with all the terms of the Agreement as set forth in Article 3 above. Further, this Decision concludes the present case: *Human Doping Case 2017 – 03 JENNIE BRANNIGAN*.
- 5.3 The Tribunal finds that - for the purpose of Article 10.11.2 of the ADRHA – and since the Tribunal has received the Agreement by the Parties prior to 18 May 2018, fairness requires that “the date of the sanction” be the date the Agreement was signed, *i.e.*, 17 May 2018. As a result of the foregoing, and following the Agreement between the Parties, the Athlete is ineligible until 18 November 2018.

6. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the Athlete, Ms. Jennie Brannigan, concerning the *Human Doping Case 2017 – 03 JENNIE BRANNIGAN* is hereby ratified by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 13.2 of the ADRHA. Pursuant to Article 13.7 of the ADRHA, an appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days from the date of receipt of this Decision.
- 3) This Decision will be published in accordance with Article 14.3 of the ADRHA.

IV. DECISION TO BE FORWARDED TO:

- a. The Athlete: Yes**
- b. The President of the NF of the Athlete: Yes**
- c. The Organising Committee of the Event through the NF: Yes**
- d. WADA & NADO of the Athlete through the FEI: Yes**

FOR THE PANEL

A handwritten signature in blue ink, reading 'L A Niddam', with a horizontal line underneath.

THE CHAIRMAN, Mr. Laurent Niddam