

Disciplinary Commission

Case No. 2021-04

03.08.2021

**Final Decision
in the matter of**

International Skating Union

Avenue Juste-Olivier 17, 1006 Lausanne,
acting through its Council, represented by its Legal Advisor,
Prof. Dr. Michael Geistlinger,

- Complainant -

against

Mr Jan Blokhuijsen,

- Alleged Offender -

and

The Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB),

- Interested ISU Member -

**Regarding the Violation of Article 7 Paragraph 1 a) of the ISU Constitution
and Article 3 of the ISU Code of Ethics.**

I. History of the Procedure

1. On May 28, 2021 the ISU filed a complaint against the Alleged Offender together with 4 exhibits. On June 1, 2021, the Alleged Offender and the Interested ISU Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint.
2. Neither the Alleged Offender nor the Interested Member have replied to the complaint.

II. Procedural Matters

3. According to Article 25, Paragraph 1 of the ISU Constitution 2018, the ISU Disciplinary Commission serves as a first instance authority to hear and decide all charges referred to it by an ISU authority against an Alleged Offender accused of a disciplinary or ethical offence.
4. The Alleged Offender is subject to the jurisdiction of the ISU Disciplinary Commission. By email of the ISU Director General of May 20, 2020 the Alleged Offender was informed that he will be part of the ISU Testing Pool in the season 2020/2021. Members of the ISU Testing Pool are subject to the ISU Anti-Doping Rules (ISU Communication 2344, page 6). Pursuant to Article 8.1.1.1 ISU Anti-Doping Rules, the Disciplinary Commission is responsible for the prosecution of Anti-Doping rules violations.
5. The ISU Director General in his email of May, 20, 2020 referred the Alleged Offender to the GUIDANCE FOR TESTING DURING COVID-19 PANDEMIC published by WADA.
6. The use of a face mask is prescribed in the Guidance:

Section 1.3. e) Blood sample collection:

Consider the collection of blood samples if intelligence warrants it or for the purpose of the blood module of the Athlete Biological Passport (ABP) on athletes from high risk endurance sports. In addition to PPE, consider additional protection measures such as: i) both the BCO and the athlete wearing a face mask and potentially adding a face shield for the BCO;

2.3 Face masks:

The WHO recommends the use of a face mask as standard protection, which should be worn by SCP at all times during the sample collection process. It is also recommended that a face mask be made available to the athlete and their representative or that they wear their own face mask during the sample collection session. During blood collection, it is recommended that face masks be used by both the BCO and the athlete due to the increased physical proximity necessary to collect a blood sample.

7. The disciplinary/ethical offences the Alleged Offender is accused of occurred on April 28, 2021, at an Out-of-Competition sample collection in Heerenveen and Dwingeloo. According to Article 25 Paragraph 6 a) of the ISU Constitution 2018 complaints must be filed with the Disciplinary Commission within 60 days of learning of the facts or events, which constitute a disciplinary or ethical offence. The Statement of Complaint arrived at the ISU Disciplinary Commission via e-mail on May 31, 2021 and respects the 60 days' time limit according to Article 25 Paragraph 6 a) of the ISU Constitution 2018.

III. Facts

8. On April 28, 2021, the ISU service provider PWC conducted an Out-of-Competition (OOC) sample collection (SCP) in Heerenveen and Dwingeloo at three Dutch Skaters.
9. The responsible persons for the SCP were Mr M. as Doping Control Officer (DCO) and Mrs M as Blood Control Officer (BCO).
10. The Alleged Offender was notified of the test at his home at 6.35 am. Whereas two of the tested Skaters did their tests without any problem, the Alleged Offender refused to wear a face mask during the control. He stated that he will never wear a mask in his own house. The Alleged Offender was explained the rules applicable for doping tests in the times of the Covid-19 pandemic and his responsibilities. The Alleged Offender did not change his mind, even having been aware of the fact that the whole Netherlands was an area of high infection risk at the time of the test. The Alleged Offender, thus, did not take care of the safety of the Blood Control Officer who did the test, nevertheless, relying on her vaccination.

IV. Motion

11. The Complainant moves:
 1. To find the Alleged Offender guilty of a violation of Article 7 Paragraph 1 a) of the ISU Constitution and of Article 3 of the ISU Code of Ethics.
 2. To impose on the Alleged Offender a Warning in accordance with Article 25 Paragraph 9 a) i) of the ISU Constitution.
12. The Alleged Offender and the Interested ISU Member made no request.

V. Law

13. The applicable rules are:
 1. Article 7 Paragraph 1 a) and c) of the ISU Constitution 2018 in conjunction with
1.3. e). WADA Guidance for testing during COVID-19 PANDEMIC November 2020
2.3. WADA Guidance for testing during COVID-19 PANDEMIC November 2020
1.2. WADA COVID-19 - ATHLETE Q&A
 2. Article 3 ISU Code of Ethics 2020

14. In the WADA Guidance for Testing No. 1.3.e) additional protection measures are required such as:

both the Blood Control Officer and the athlete wearing a face mask and potentially adding a face shield for the BCO.

15. In the WADA Guidance for Testing No. 2.3. face masks are required:

The WHO recommends the use of a face mask as standard protection, which should be worn by SCP at all times during the sample collection process. It is also recommended that a face mask be made available to the athlete and their representative or that they wear their own face mask during the sample collection session. During blood collection, it is recommended that face masks be used by both the BCO and the athlete due to the increased physical proximity necessary to collect a blood sample.

16. The WADA COVID-19 Athlete Q & A explain under No.3:

Athletes and sample collection personnel must also wear masks, and as much as possible, maintain the recommended physical distancing requirements as prescribed by local health authorities (one-two metres).

17. By refusing to wear a face mask, the Alleged Offender violated WADA's rules on the protection of doping control officers.

18. At the same time his behaviour violated Article 3 of the ISU Code of Ethics 2020. Wearing a mask during blood tests has the purpose of protecting the safety of the Skater and the BCO. By refusing to wear a mask the Alleged Offender accepted willingly that the BCO might be infected with Covid-19. Such behaviour cannot be qualified but as irresponsible and unethical.

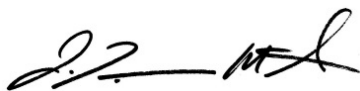
19. The Alleged Offender is guilty of a misconduct and a violation of Article 7 Paragraph 1 a) and c) of the ISU Constitution in connection with WADA Guidance for testing during COVID-19 PANDEMIC and Article 3 of the ISU Code of Ethics.

VI. Decision

1. Mr. Jan Blokhuijsen is guilty of a misconduct and a violation of Article 7 Paragraph 1 a) and c) of the ISU Constitution in connection with WADA Guidance for testing during COVID-19 PANDEMIC and Article 3 of the ISU Code of Ethics.
2. Mr. Jan Blokhuijsen is reprimanded and warned to not engage in similar conduct in the future, which conduct will cause a more severe action.
3. Mr. Jan Blokhuijsen bears his own costs.



Volker Waldeck



Jean-François Monette



Susan Petricevic

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 25 Paragraph 12 and Article 26 of the ISU Constitution 2018.