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Olympic Insider

by Alan Abrahamson

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[Hardy: intriguing, potential precedent-setting suspension](#)

U.S. swimmer Jessica Hardy, who tested positive at the 2008 Olympic Trials for the banned substance clenbuterol, was issued a 12-month suspension in an intriguing and perhaps potentially precedent-setting decision made public Monday.

It's intriguing because the three-member arbitration panel said that Hardy, while responsible under the anti-doping rules for what was found in her system, had diligently tried in multiple ways before taking dietary supplements made by a Texas-based company, AdvoCare, to make sure she would not flunk a doping test — only to have that exact thing happen. The panel ruled Hardy had proven that the supplements she took were tainted with clenbuterol; she tested positive in a sample taken last July 4 at the Trials in Omaha, Neb., and had to give up her space on the 2008 U.S. team.

The company has denied liability. It and Hardy are engaged in civil litigation.

It's potentially precedent-setting, meanwhile, because Hardy could, when all is said and done, get even less time — less than six months.

Two years is the standard penalty for a first-time doping offense. Because Hardy didn't mean to flout the rules, the panel said, she deserved half that, a year. But six months is key; anything more than that, under an International Olympic Committee rule adopted just last year, would leave her ineligible as well for the 2012 London Games.

The arbitration panel said that to be forced to miss two editions of the Games would be “shockingly disproportionate” for someone who did not intend to cheat and tried hard not to — according to the decision, a USA Swimming nutritionist

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even telling Hardy about the supplements at issue that “if it were her, she would take them.”

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The panel urged Hardy to ask the IOC for a waiver in her case of the six-month rule, citing what it called “truly exceptional” circumstances. It also, however, took the unusual step of saying that if the IOC did not issue a waiver, it — the panel — would retain jurisdiction over the case and might then reconsider the length of the suspension.

The IOC might also appeal the decision made public Monday to the Court of Arbitration for Sport in Lausanne, Switzerland. It remained immediately unclear what impact such a move might ultimately mean for Hardy’s eligibility; it might mean the entire case would be reviewed anew.

As it stands now, Hardy’s suspension started last Aug. 1; it runs through this July 31. That leaves her essentially ineligible for the 2009 world championships July 26- Aug. 2 in Rome.

In a statement issued by her lawyer, Howard Jacobs of Westlake Village, Calif., Hardy said: “The past year, including missing the 2008 Olympic Games, has been heartbreaking, the most difficult year of my life. It was made more tolerable by the numerous expressions of support I received from teammates, competitors and fans all over the world, for which I will always be grateful.

“I look forward to again representing my country ...”

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