

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

UNITED STATES ANTI-DOPING AGENCY,	)	
	)	
Claimant,	)	<b>ARBITRAL AWARD</b>
	)	
	)	
BRIANNA ROLLINS,	)	AAA No. 01-17-001-3244
	)	
Respondent	)	
	)	
	)	

WE, THE UNDERSIGNED ARBITRATORS (“Panel”), have been designated by the above-named parties, have been duly sworn, and have heard the allegations, proofs, and arguments of the parties by written submissions and at a hearing held on April 5, 2017. We hereby render the Panel’s full award pursuant to its obligation to do so no later than May 5, 2017 under Rule R-38 of the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (“Supplementary Procedures”).

**1. SUMMARY**

1.1 Respondent is a 25-year-old USA Track & Field (“USATF”) hurdler, who competes at an elite level in international competitions and won a gold medal at the 2016 Rio Olympic Games. During her illustrious collegiate career, she also competed in USATF competitions that qualified her for USADA’s Registered Testing Pool (“RTP”), which she joined in October 2012. Due to her continued successes during and after college, she was selected by the

International Association of Athletics Federations (“IAAF”) in October 2013 to become a member of the International Testing Pool (“ITP”). She remains in USADA’s ITP to this day. Throughout her years in the RTP and ITP she has received repeated and extensive interactive training in the requirements of the Anti-Doping Codes as they pertain to whereabouts reporting.

1.2 This case arises from Claimant’s allegation of three whereabouts failures during a twelve-month period: April 27, 2016 (“Incident 1”), September 13, 2016 (“Incident 2”), and September 27, 2016 (“Incident 3”). Respondent has no prior violations of the WADA Code.

1.2.1 Incident 1: Respondent’s whereabouts filing with USADA for the date of April 27, 2016 recorded that she would be at her primary residence in California (“Primary Residence”) from “7:00 AM-8:00 AM” [the required 60-minute time slot] and that she would be in Des Moines, Iowa during “April 27-April 30.” On April 27, 2016, a Doping Control Officer (“DCO”) attempted to test Respondent during her designated 60-minute time slot at her Primary Residence. When reached by phone at 7:08 a.m., Respondent indicated that she was on her way to the airport for a flight. The DCO agreed to meet Respondent at the airport and travelled there forthwith. According to the DCO, when the DCO arrived at the airport she contacted Respondent by text message “to let her know that I was already there and she stated that she was getting off the shuttle and she did not have to go [to] the bathroom. . . . I called her and left a message, because I couldn’t find her. She called back and stated that she had already gone through security.” Respondent declined the DCO’s request to come back out to sign the standard form which would have stated that, “she was notified, that we met at the airport and that she could not provide a sample.” Later that day, in the evening, Respondent sent to Claimant’s whereabouts update e-mail address an e-mail stating in its entirety, “Not at home. Will be

in Des Moines, IA for drake relays till Sunday. Staying at the downtown Marriott. Thank you. Brianna Rollins”. The IAAF notified Respondent of her whereabouts failure the following day by letter, stating, among other things, that: “You have previously been advised that a failure to be available for testing during your designated 60-minute time slot at your specified location could constitute committing a Missed Test. . . . Unless you provide a valid explanation for the above apparent Missed Test, a Missed Test will be recorded against you. . . . You have the opportunity to provide a written explanation for your apparent absence for testing, within the next 14 days, i.e. by **no later than 12<sup>th</sup> May 2016.**” [underlining in original] No response to this letter was received by IAAF.

Accordingly, the IAAF declared a whereabouts failure via a final decision letter sent to Respondent on May 23, 2016. This letter advised her that, “you have the right to request an administrative review . . . by the IAAF Anti-Doping Administrator . . . by a written submission, which must be received . . . **no later than 6<sup>th</sup> June 2016.**” [underlining in original] Respondent made no such submission. The letters warned her of the consequences of three whereabouts failures within 12 months and reminded her of the requirement to be available in the 60-minute time slot and how to make whereabouts updates.

1.2.2 Incident 2: Respondent’s whereabouts filing with Claimant for the date of September 13, 2016 stated that she would be at her Primary Residence from “7:00 AM-8:00 AM” [the required 60-minute time slot] and that she would be at the address of her training site from “9:00 AM-12:30 PM.” On that date, the DCO attempted to test Respondent at her Primary Residence commencing at 8:01 a.m. Upon contacting an individual at Respondent’s residence, the DCO was informed by that person that

Respondent was in Florida and unavailable for testing. The DCO contacted Respondent by phone, confirmed she was in Florida, and encouraged her to update her whereabouts information. Later, on the same day, Respondent sent to Claimant's whereabouts update e-mail address an e-mail stating, "Currently in Miami right now till Monday. Staying at Confidante Hotel on south beach. Brianna". Claimant notified Respondent by letter of this unsuccessful attempt on September 21, 2016, stating, among other things, "it has been determined that the DCO made a reasonable effort to locate you at the location specified on your location form and that this should be declared a Filing Failure." Respondent replied on October 3, 14, and 19 with information about why she was traveling at the time of the whereabouts failure and detailing her updates to the whereabouts filing system, and including attached copies of e-mails about her travel plans on the dates of all three incidents. No update was provided preceding the time of the DCO visit on September 13, 2016. None of these travel plans or updates included designation of 60-minute time slots for testing at the locations where she would be. On October 25, 2016, Claimant sent Respondent a final decision letter declaring a whereabouts failure.

1.2.3 Incident 3: Respondent's whereabouts filing with Claimant for the date of September 27, 2016 stated that she would be at her Primary Residence from "7:00 AM-8:00 AM" [the required 60-minute time slot], that she would be at her training address from "9:AM-12:30 PM," and that she would be at a second training site address from "1:00 PM- 2:30 PM." On September 20, 2016, Respondent sent the following e-mail to Claimant's update e-mail address: "Traveling in Chicago right now. Will be in Atlanta tomorrow." On September 27, 2016, the DCO attempted to test Respondent during her 60-minute time slot at her Primary Residence, commencing at 7:00 a.m. After being unable

to reach her at her apartment, the DCO called Respondent. She answered on the third call and stated that she was in Georgia. Respondent told the DCO that she had already submitted an update to the whereabouts filing system. The conversation ended at or before 7:49 a.m., September 27, 2016. Respondent has not produced any e-mail or system update by Respondent referring to September 27, 2016 and its time slot that was sent or filed prior to the commencement of the 60-minute time slot at 7:00 a.m. on that date.<sup>1</sup> The above-quoted e-mail of September 20, 2016 does not refer to September 27. The IAAF notified Respondent on September 29, 2016, of a missed test from that day. On October 4, 2016, Respondent sent the IAAF the same response she had sent to Claimant on October 3, 2016. The IAAF responded to Respondent by a final decision letter on October 14, 2016, declaring a whereabouts failure and containing the same notifications as given by the IAAF in its letter of May 23, 2016. Again, Respondent did not request administrative review in response to the IAAF letter.

1.2.4 Claimant sent Respondent a letter on December 19, 2016, notifying her that her two whereabouts failures recorded by the IAAF plus her whereabouts failure recorded by Claimant within a 12-month period constituted an anti-doping rule violation. The letter informed her of her right to voluntarily accept a provisional suspension, provided she so informed Claimant no later than January 3, 2017. Respondent requested a 6-day extension to file written materials to the Anti-Doping Review Board, which was granted. On January 9, 2017, Respondent filed a brief with the Anti-Doping Review Board. Claimant filed a response brief on February 1, 2017. Respondent then filed a reply

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<sup>1</sup> At 7:55 a.m. PDT on September 27, 2016, after speaking with the DCO, Respondent sent an e-mail to "Simon Update Manager" saying, "Headed to DC from Atlanta to visit White House tomorrow then I'll be in Clemson on Sept 30 & Oct 1. I get home on Oct 3<sup>rd</sup>."

brief on February 15, 2017. While Respondent's reply brief was pending, she accepted a provisional suspension on February 13, 2017. The Anti-Doping Review Board found there was a sufficient basis for the case to move forward, and Claimant sent Respondent a charging letter on March 1, 2017.

1.2.5 On March 3, 2017, Respondent made a request for arbitration pursuant to R-12 of the Supplementary Procedures and requested an expedited hearing, with a decision rendered prior to her anticipated competition at the Grenada Invitational on April 8, 2017. On March 28, 2017, Respondent informed the Arbitrators that she had decided not to compete on April 8, 2017 and that a ruling in this matter is no longer requested or expected to be rendered prior to April 8, 2017.

1.2.6 On March 10, 2017, Claimant and Respondent entered a Stipulation of Uncontested Facts and Issues ("Stipulation") which provided, *inter alia*:

1.2.6.1 That the USADA Protocol for Olympic and Paralympic Movement Testing, as revised January 1, 2015 ("Protocol") governs all proceedings involving the aforesaid charges;

1.2.6.2 That the mandatory provisions of the World Anti-Doping Code ("Code") including, but not limited to, the definitions of doping, burdens of proof, sanctions, the Protocol, IAAF Anti-Doping Rules, and the United States Olympic Committee ("USOC") National Anti-Doping Policies are applicable to all matters at issue herein;

1.2.6.3 "For all 2016 filing periods, Ms. Rollins was duly notified that she had been designated for inclusion in the USADA International Testing Pool; of the requirement to make whereabouts filings, including the requirement to designate a 60-

minute time slot each day during which Ms. Rollins would be available for testing; and of the consequences for failing to comply with these requirements, *i.e.*, a filing failure or missed test, of which any combination of three in a 12-month period would result in an Anti-Doping Rule violation; ”

1.2.6.4 “Ms. Rollins’s third quarter whereabouts filing for 2016 indicated that she would be at [her Primary Residence] from 7 a.m. to 8 a.m. on September 13, 2016. Her whereabouts further reflected that she would be at [her training site] from 9 a.m. to 12:30 p.m. that same day. The assigned [DCO] attempted to locate Ms. Rollins at [her Primary Residence] for testing beginning at 8:01 a.m. on September 13, 2016. The DCO reached Ms. Rollins’s roommate at the listed . . . apartment. However, Ms. Rollins’s roommate stated that Ms. Rollins was not there. The DCO then called Ms. Rollins, who indicated that she was in Miami;” and

1.2.6.5 “Based on the foregoing, Ms. Rollins acknowledges that she has committed one whereabouts failure on September 13, 2016 (filing failure) within the 12-month period from April 2016 through March 2017.”

1.3 Following the submissions by both parties and a full hearing on April 5, 2017, in which Respondent contested the allegations of a whereabouts failure on April 27, 2016, and thereby contested the allegation of a total of three whereabouts failures in a 12-month period, this Panel finds that Respondent violated Article 2.4 of the 2015 WADA World Anti-Doping Code, (“WADA Code”) (including Annex I, the International Standard for Testing and Investigations [“ISTI” or “Annex I”]), Article 2.4 of the Protocol, and Rule 32.2(d) of the IAAF Anti-Doping and Medical Rules (“IAAF Rules”) by committing a combination of three missed tests and/or filing failures as defined in the ISTI, within a twelve-month period.

## **2. PARTIES**

2.1 USADA is the independent anti-doping agency for Olympic sports in the United States and is responsible for anti-doping compliance and enforcement under the Protocol and the IAAF Competition Rules.

2.2 At the hearing, Claimant was represented by Jeff T. Cook. Claimant is located at 5555 Tech Center Drive, Suite 200, Colorado Springs, CO 80919-9918.

2.3 Respondent is a resident of Canoga Park, California, and is an elite hurdler in international athletic competition with many championships to her credit, including a gold medal at the 2016 Olympic Games in Rio de Janeiro.

2.4 At the hearing, Respondent was represented by Howard L. Jacobs and Lindsay S. Brandon, of the law offices of Howard L. Jacobs, 2815 Townsgate Road, Suite 200, Westlake Village, CA 91361.

## **3. JURISDICTION**

3.1 This proceeding conforms to Article 8 of the WADA Code. The Panel has jurisdiction over this dispute pursuant to Paragraph 17 of the Protocol, which provides, in pertinent part that, “all hearings under the Protocol . . . will take place in the United States before the AAA using the Supplementary Procedures.” In their Stipulation the parties agreed, “That [the Protocol] governs all proceedings involving Ms. Rollins’s three alleged whereabouts failures within a 12-month period from April 2016 through September 2016.”

3.2 Further, this Arbitration was initiated by agreement of the parties pursuant to the Claimant’s letter to Respondent, dated March 1, 2017, in which it advised Respondent of her



right to take this matter to arbitration, followed by Respondent's letter of March 3, 2017 which states that, "Brianna Rollins desires a hearing to contest the sanction sought by USADA.

Pursuant to R-12 of the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, Ms. Rollins elects to have the matter heard by a panel of 3 arbitrators."

#### **4. RULES APPLICABLE TO THIS DISPUTE**

As agreed in the Stipulation, the rules applicable to this dispute are the mandatory provisions of the WADA Code, including ISTI, the USADA Whereabouts Policy, IAAF Rules, and the USOC National Anti-Doping Policy, as of January 1, 2015. The applicable WADA Code provisions will be referenced unless otherwise specified. They are as follows:

##### ***ARTICLE 2 OF WADA CODE. ANTI-DOPING RULE VIOLATIONS***

...

*Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule. . . . The following constitute anti-doping rule violations:*

...

##### ***Article 2.4 of WADA Code. Whereabouts Failures***

*Any combination of three missed tests and/or filing failures, as defined in the International Standard for Testing and Investigations, within a twelve-month period by an Athlete in a Registered Testing Pool.*

##### ***ARTICLE 3.1 OF WADA CODE. BURDENS AND STANDARDS OF PROOF***

*The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

##### ***ARTICLE I.1 OF ANNEX I. INTRODUCTION***

*1.1.1 An Athlete who is in a Registered Testing Pool is required:*

*a. to make quarterly Whereabouts Filings that provide accurate and complete information about the Athlete's whereabouts during the forthcoming quarter, including identifying where he/she will be living, training and competing during that quarter, and to update those Whereabouts Filings where necessary, so that he/she can be located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in Article I.3. A failure to do so may be declared a Filing Failure; and*

*b. to specify in his/her Whereabouts Filings, for each day in the forthcoming quarter, one specific 60-minute time slot where he/she will be available at a specific location for Testing, as specified in Article I.4. This does not limit in any way the Athlete's Code Article 5.2 obligation to submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing Authority over him/her. Nor does it limit his/her obligation to provide the information specified in Article I.3 as to his/her whereabouts outside that 60-minute time slot. However, if the Athlete is not available for Testing at such location during the 60-minute time slot specified for that day in his/her Whereabouts Filing, that failure may be declared a Missed Test.*

#### **ARTICLE I.3 OF ANNEX I. WHEREABOUTS FILING REQUIREMENTS**

*1.3.1 On a date specified by the Anti-Doping Organization collecting an Athlete's Whereabouts Filings – which date shall be prior to the first day of each quarter (i.e., 1 January, 1 April, 1 July and 1 October, respectively) – an Athlete in a Registered Testing Pool must file a Whereabouts Filing that contains at least the following information:*

*...*

*d. for each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc);*  
*e. for each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g. school), as well as the usual timeframes for such regular activities;*

*[Comment<sup>2</sup> to I.3.1(e): . . . If the Athlete is not currently training, he/she should specify that in his/her Whereabouts Filing and detail any other routine that he/she will be following in the forthcoming quarter, e.g., his/her work routine, or school schedule, or rehab routine, or other routine, and identify the name and address of each location where that routine is conducted and the time-frame during which it is conducted. . . . ]*

*...*

*1.3.2 Subject to Article I.3.3, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for Testing at a specific location.*

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<sup>2</sup> All "Comments" shown herein are official comments provided by WADA within the WADA Code.

*[Comment to I.3.2: The Athlete can choose which 60-minute time slot between 5 a.m. and 11 p.m. to use for this purpose, provided that during the time slot in question he/she is somewhere accessible by the DCO. It could be the Athlete's place of residence, training or Competition, or it could be another location (e.g., work or school). An Athlete is entitled to specify a 60- minute time slot during which he/she will be at a hotel, apartment building, gated community or other location where access to the Athlete is obtained via a front desk, or doorman, or security guard. In addition, an Athlete may specify a time slot when he/she is taking part in a Team Activity. In either case, however, any failure to be accessible and available for Testing at the specified location during the specified time slot will be a Missed Test.]*

...

*I.3.4 It is the Athlete's responsibility to ensure that he/she provides all of the information required in a Whereabouts Filing accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in his/her Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing. More specifically, the Athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location. A failure to do so may be pursued as a Filing Failure . . .*

*[Comment to I.3.4: For example, declarations such as "running in the Black Forest" are insufficient and are likely to result in a Filing Failure. Similarly, specifying a location that the DCO cannot access (e.g., a "restricted-access" building or area) is likely to result in a Filing Failure. . . . Where an Athlete does not know precisely what his/her whereabouts will be at all times during the forthcoming quarter, he/she must provide his/her best information, based on where he/she expects to be at the relevant times, and then update that information as necessary in accordance with Article I.3.5.]*

*I.3.5 Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article I.3.4, the Athlete must file an update so that the information on file is again accurate and complete. In particular, the Athlete must always update his/her Whereabouts Filing to reflect any change in any day in the quarter in question (a) in the time or location of the 60-minute time slot specified in Article I.3.2; and/or (b) in the place where he/she is staying overnight. The Athlete must file the update as soon as possible after the circumstances change, and in any event prior to the 60-minute time slot specified in his/her filing for the day in question. A failure to do so may be pursued as a Filing Failure . . .*

*I.3.6 An Athlete may only be declared to have committed a Filing Failure where*

*the Results Management Authority establishes each of the following:*

*a. that the Athlete was duly notified (i) that he/she had been designated for inclusion in a Registered Testing Pool; (ii) of the consequent requirement to make Whereabouts Filings; and (iii) of the Consequences of any Failure to Comply with that requirement;*

*b. that the Athlete failed to comply with that requirement by the applicable deadline;*

*[Comment to I.3.6(b): An Athlete fails to comply with the requirement to make Whereabouts Filings (i) where he/she does not make any such filing, or s not make any such filing, or where he/she fails to update the filing as required by Article I.3.5; or (ii) where he/she makes the filing or update but does not include all of the required information in that filing or update (e.g. he/she does not include the place where he/she will be staying overnight for each day in the following quarter, or for each day covered by the update, or omits to declare a regular activity that he/she will be pursuing during the quarter, or during the period covered by the update); or (iii) where he/she includes information in the original filing or the update that is inaccurate (e.g., an address that does not exist) or insufficient to enable the Anti-Doping Organization to locate him/her for Testing (e.g., “running in the Black Forest”).]*

*c. (in the case of a second or third Filing Failure in the same quarter) that he/she was given notice, in accordance with Article I.5.2(d), of the previous Filing Failure, and (if that Filing Failure revealed deficiencies in the Whereabouts Filing that would lead to further Filing Failures if not rectified) was advised in the notice that in order to avoid a further Filing Failure he/she must file the required Whereabouts Filing (or update) by the deadline specified in the notice (which must be no less than 24 hours after receipt of the notice and no later than the end of the month in which the notice is received) and yet failed to rectify that Filing Failure by the deadline specified in the notice; and*

*...*

*d. that the Athlete’s Failure to Comply was at least negligent. For these purposes, the Athlete will be presumed to have committed the failure negligently upon proof that he/she was notified of the requirements yet failed to comply with them. That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to the failure.*

#### **ARTICLE I.4 OF ANNEX I. AVAILABILITY FOR TESTING**

*I.4.1 While Code Article 5.2 specifies that every Athlete must submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing jurisdiction over him/her, in addition an Athlete in a Registered Testing Pool must specifically be present and available for Testing on any given day during the 60-*

*minute time slot specified for that day in his/her Whereabouts Filing, at the location that the Athlete has specified for that time slot in such filing. A Failure to Comply with this requirement shall be pursued as an apparent Missed Test. If the Athlete is tested during such a time slot, the Athlete must remain with the DCO until the Sample collection has been completed, even if this takes longer than the 60-minute time slot. . . .*

*[Comment to I.4.1: For Testing to be effective in deterring and detecting cheating, it should be as unpredictable as possible. Therefore, the intent behind the 60-minute time slot is not to limit Testing to that period, or to create a 'default' period for Testing, but rather: a. to make it very clear when an unsuccessful attempt to test an Athlete will count as a Missed Test; b. to guarantee that the Athlete can be found, and a Sample can be collected, at least once per day (which should deter doping, or, as a minimum, make it far more difficult); c. to increase the reliability of the rest of the whereabouts information provided by the Athlete, and so to assist the Anti-Doping Organization in locating the Athlete for Testing outside the 60-minute time slot. The 60-minute time slot "anchors" the Athlete to a certain location for a particular day. Combined with the information that the Athlete must provide as to where he/she is staying overnight, training, competing and conducting other 'regular' activities during that day, the Anti-Doping Organization should be able to locate the Athlete for Testing outside the 60- minute time slot; . . .*

*I.4.2 To ensure fairness to the Athlete, where an unsuccessful attempt has been made to test an Athlete during one of the 60-minute time slots specified in his/her Whereabouts Filing, any subsequent unsuccessful attempt to test that Athlete (by the same or any other Anti-Doping Organization) during one of the 60-minute time slots specified in his/her Whereabouts Filing may only be counted as a Missed Test (or, if the unsuccessful attempt was because the information filed was insufficient to find the Athlete during the time slot, as a Filing Failure) against that Athlete if that subsequent attempt takes place after the Athlete has received notice, in accordance with Article I.5.2(d), of the original unsuccessful attempt*

*I.4.3 An Athlete may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:*

- a. that when the Athlete was given notice that he/she had been designated for inclusion in a Registered Testing Pool, he/she was advised that he/she would be liable for a Missed Test if he/she was unavailable for Testing during the 60-minute time slot specified in his/her Whereabouts Filing at the location specified for that time slot;*
- b. that a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot;*

*[Comment to I.4.3(b): . . . If an Athlete is not available for Testing during his/her specified 60-minute time slot at the location specified for that time*

*slot for that day, he/she will be liable for a Missed Test even if he/she is located later that day and a Sample is successfully collected from him/her.]*

*c. that during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;*

*[Comment to I.4.3(c): Once the DCO has arrived at the location specified for the 60-minute time slot, if the Athlete cannot be located immediately then the DCO should remain at that location for whatever time is left of the 60-minute time slot and during that remaining time he/she should do what is reasonable in the circumstances to try to locate the Athlete. . . .Where an Athlete has not been located despite the DCO's reasonable efforts, and there are only five minutes left within the 60-minute time slot, then as a last resort the DCO may (but does not have to) telephone the Athlete (assuming he/she has provided his/her telephone number in his/her Whereabouts Filing) to see if he/she is at the specified location. If the Athlete answers the DCO's call and is available at (or in the immediate vicinity of) the location for immediate testing (i.e., within the 60-minute time slot), then the DCO should wait for the Athlete and should collect the Sample from him/her as normal. However, the DCO should also make a careful note of all the circumstances, so that it can be decided if any further investigation should be conducted. . . .If the Athlete answers the DCO's call and is not at the specified location or in the immediate vicinity, and so cannot make himself/herself available for testing within the 60-minute time slot, the DCO should file an Unsuccessful Attempt Report. . . .]*

*d. that Article I.4.2 does not apply or (if it applies) was complied with; and  
e. that the Athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at subArticles I.4.3(a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to his/her failure (i) to be available for Testing at such location during such time slot, and (ii) to update his/her most recent Whereabouts Filing to give notice of a different location where he/she would instead be available for Testing during a specified 60-minute time slot on the relevant day.*

## **ARTICLE I.5 OF ANNEX I. RESULTS MANAGEMENT**

*. . .  
I.5.5 An Athlete alleged to have committed a Code Article 2.4 anti-doping rule violation shall have the right to have such allegation determined at a full evidentiary hearing in accordance with Code Article 8. The hearing panel shall not be bound by any determination made during the results management process,*

*whether as to the adequacy of any explanation offered for a Whereabouts Failure or otherwise. Instead, the burden shall be on the Anti-Doping Organization bringing the proceedings to establish all of the requisite elements of each alleged Whereabouts Failure to the comfortable satisfaction of the hearing panel. If the hearing panel decides that one (or two) Whereabouts Failure(s) have been established to the required standard, but that the other alleged Whereabouts Failure(s) has/have not, then no Code Article 2.4 anti-doping rule violation shall be found to have occurred. . . .*

*I.5.6 A finding that an Athlete has committed a Code Article 2.4 anti-doping rule violation has the following Consequences: (a) imposition of a period of Ineligibility in accordance with Code Article 10.3.2 (first violation) or Code Article 10.7 (subsequent violation(s)); and (b) in accordance with Code Article 10.8, Disqualification (unless fairness requires otherwise) of all individual results obtained by the Athlete from the date of the Code Article 2.4 anti-doping rule violation through to the date of commencement of any Provisional Suspension or Ineligibility period, with all of the resulting Consequences, including forfeiture of any medals, points and prizes. For these purposes, the anti-doping rule violation shall be deemed to have occurred on the date of the third Whereabouts Failure found by the hearing panel to have occurred. The impact of any Code Article 2.4 anti-doping rule violation by an individual Athlete on the results of any team for which that Athlete has played during the relevant period shall be determined in accordance with Code Article 11.*

#### **ARTICLE I.6. OF ANNEX I. WHEREABOUTS RESPONSIBILITIES**

*. . . .*

*b. such Athlete remains personally responsible at all times for ensuring he/she is available for Testing at the whereabouts declared on his/her Whereabouts Filings. It shall not be a defence to an allegation of a Missed Test that the Athlete delegated responsibility for filing his/her whereabouts information for the relevant period to a third party and that third party failed to file the correct information or failed to update previously-filed information so as to ensure that the whereabouts information in the Whereabouts Filing for the day in question was current and accurate.*

#### **ARTICLE 10.3 OF WADA CODE. INELIGIBILITY FOR OTHER ANTI-DOPING RULE VIOLATIONS**

*The period of ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Article 10.5 or 10.6 are applicable:*

*. . . .*

*10.3.2 For violations of Article 2.4, the period of Ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Athlete's degree of Fault. The flexibility between two years and one year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to*

avoid being available for Testing.

**ARTICLE 10.11 OF WADA CODE. COMMENCEMENT OF INELIGIBILITY PERIOD**

*Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility. . . .*

**Article 10.11.1 of WADA Code. Delays Not Attributable to the Athlete or other Person** *Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.*

...

**Article 10.11.3 of WADA Code. Credit for Provisional Suspension or Period of Ineligibility Served**

...

**10.11.3.2** *If an Athlete or other Person voluntarily accepts a Provisional Suspension in writing from an Anti-Doping Organization with results management authority and thereafter respects the Provisional Suspension, the Athlete or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. . . .*

**10.11.3.3** *No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was suspended by his or her team.*

**RULE 48 OF IAAF ANTI-DOPING AND MEDICAL RULES**

- 1.** *Anti-Doping rules are, by their nature, competition rules governing the conditions under which the sport of Athletics is to be held. They are not intended to be subjected to or limited by the requirements and legal standards applicable to criminal and civil proceedings or employment matters. . . .*
- 2.** *These Anti-Doping Rules shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or Governments.*
- 3.** *The comments annotating various provisions of the Code shall be used to interpret these Anti-Doping Rules.*

...

**5. PROCEEDINGS IN THIS MATTER**



5.1 Following Respondent's request of March 3, 2017 the undersigned panel of arbitrators was selected and the required oaths were taken by them.

5.2 On March 20, 2017 a preliminary hearing was held by teleconference among all the arbitrators and counsel for both parties. Pursuant to this Panel's resulting Report of Preliminary Hearing and Scheduling Order, dated March 20, 2017, the parties duly and timely filed pre-hearing briefs, along with the Stipulation and their designations of witnesses and exhibits.

5.3 In accordance with that Report and Order, the hearing in this matter was held on April 5, 2017 at 1875 Century Park East, Suite 1400, Los Angeles, CA commencing at 10 a.m. All witnesses were duly sworn. All exhibits offered by both parties with their briefs or at the Hearing were taken into evidence without objection. Both parties declined to request a stenographic record be kept.

5.4 Appearing in person at the hearing were counsel for both parties as identified hereinabove; Brianna Rollins, Respondent; Lorena Martinez, the DCO; and Ramon Clay, athlete liaison with Respondent's agent, Stellar Athletics. Witnesses appearing by telephone were Matthew Fedoruk, Senior Director of Science and Research of Claimant; and Lindsey Stafford, Doping Control Manager of Claimant.

5.5 Following opening statements by counsel for both parties, testimony was taken in the order agreed by the parties: Claimant called Ms. Martinez; Respondent called Ms. Rollins; Claimant called Dr. Fedoruk and then Ms. Stafford; and Respondent called Mr. Clay. Closing statements by both parties concluded the hearing at about 4:15 p.m. Thereupon the hearing was closed under R-32 of the Supplementary Procedures.

## **6. CONTENTIONS OF THE PARTIES AND THE EVIDENCE**

6.1 While the Panel considered all the facts, allegations, legal arguments, and evidence submitted by the parties, we refer in this Award only to the submissions and evidence

considered necessary to explain the Panel's reasoning.

6.2 Claimant contended that Incidents 1, 2, and 3 constitute the requisite three whereabouts failures that amount to a violation of WADA Code Article 2.4. In the Stipulation, Respondent conceded that Incident 2 was a filing failure as alleged, and therefore that charge is not contested. Further, while Respondent's pre-hearing brief questioned the charge of a missed test failure in Incident 3, in the hearing Respondent no longer contested that allegation. Therefore, the point of contention between the parties on the issue of violation is reduced to whether Incident 1, on April 27, 2016, was a whereabouts failure so as to trigger a violation under WADA Code Article 2.4. Both parties agree that a total of three failures within 12 months are required. Both parties agree that Article I.4.3 of Annex I provides the elements that must be met to find a violation. The parties contested the length of sanction and its starting date in the event a violation is found. Claimant argued for 18 months from the date of the provisional suspension dated February 13, 2017. Respondent emphasized that she has an unblemished record, that this matter does not involve allegations of the use of banned substances or other cheating and argued for the minimum sanction of one year, beginning at the date of the last failure—September 27, 2016, or at least to credit her for the full period of provisional suspension.

6.3 The first witness, Lorena Martinez, the DCO, testified that she had been in her role at Claimant since 2003 and had been regularly, repeatedly trained and tested by Claimant. She recounted the events of April 27, 2016 and September 27, 2016 in accordance with the facts set forth in paragraphs 1.2.1 and 1.2.3, above. She testified that she could have gone to administer the test on one of several days, as requested by IAAF, but chose April 27 because it appeared to her from the whereabouts system filing that Respondent would be in Des Moines at

the Drake Relays beginning on the 28<sup>th</sup> and thus unavailable then. The 27<sup>th</sup> appeared to be a travel day and Respondent's 60-minute time slot at 7-8 am on the 27<sup>th</sup> could indicate that Respondent's departure to fly to Des Moines would occur later in the day. In her experience, two locations in one day are not necessarily contradictory and erroneous. She recounted that, after consulting her supervisor at USADA at about 7:30 a.m., she went to the airport in a continuing effort to collect the sample from Respondent because the DCO's assignment is to try to collect the sample.

6.4 Brianna Rollins, Respondent, testified that she has participated in track and field since 2005, and has been subject to drug testing since 2012, when she was placed in the RTP. She was added to the ITP in 2013. She stated that she is strongly against any doping by athletes. She has been tested many times, both in and out of competition with no positive results. She confirmed that she had received regular educational and informational materials and reminders from USATF and Claimant concerning the anti-doping regulations including whereabouts filing requirements, and had successfully participated in annual interactive on-line educational sessions concerning such rules. She knew that she is required to enter quarterly reports on her whereabouts for the ensuing calendar quarter and that such reports must show her home address, any regularly recurring appointments, and, for each day, even when away from home, a 60-minute time slot where she will be available for testing, along with sufficient information so that a DCO can locate her. She was also aware that any change in what she initially filed with the quarterly report or any necessary supplemental information must be filed by an update so that the report remains accurate and complete. Aside from the Incidents, she frequently e-mailed updates. She estimated having done so 15 times in 2016. Respondent indicated she had timely made her quarterly whereabouts filings on Claimant's on-line filing program. She said that she had received no training on using the program; that initially the program had been difficult to use, but that it had improved over time up to her use of it for the filings in 2016. For updates, she used e-

mail. She explained that in filing her whereabouts for the second quarter of 2016 (and all other quarters) she would first input her home address, then her 60-minute time slot [which was 7-8 a.m. at her home address], then her recurring appointments of which she was aware, then her competitions of which she was aware. The program populates the calendar dates for the repetitive items, such as the 60-minute time slot and recurring appointments, for the quarter automatically. The competitions, which are often out of town, are accessed on the program by a “drop down” menu that lists the upcoming events known to Claimant [in the case of April 27, 2016, the Drake Relays]. Upon designating participation in a competition, the program automatically inserts it in its dates on the calendar and removes any recurring appointments on the same day. Respondent thought it also automatically removed the 60-minute time slot for those dates, but it does not do so, nor does it routinely prompt the athlete in cases where two events (the competition and the 60-minute time slot) remain listed for one day in two different cities. After inputting the above information, the program allows the athlete to review the daily entries for the quarter in monthly format before hitting “submit,” and Respondent says she scrolled through the calendar before submitting her filing for the second calendar quarter in March 2016.

6.5 Continuing, Respondent recounted the events of the morning of April 27, 2016 consistently with the report by the DCO, except that Respondent recalled arriving at the airport at 8:30 a.m. She stated that she thought the 60-minute time slot had been removed from her calendar when she entered the Drake Relays competition by the “drop-down” menu during her quarterly filing in late March 2016. She confirmed that she had filed no update prior to the morning of April 27, 2016. Respondent confirmed receiving letters of April 28 and May 23, 2016 from IAAF declaring she had a missed test recorded against her and offering her the opportunity to provide a written explanation and a final appeal. She stated that she did not

respond to those letters because she was busy training for the upcoming Olympic Games.

6.6 Respondent further testified with respect to Incident 3 that she had not updated her 60-minute time slot, which was in the program as 7-8 a.m. at her home address, even though she was in Atlanta. She confirmed that when she told the DCO on the telephone on the morning of September 27, 2016 that she had updated her filing she was thinking of her e-mail of September 20, 2016 saying, "Traveling in Chicago right now. Will be in Atlanta tomorrow."

6.7 Dr. Fedoruk testified that, as Senior Managing Director of Science and Research at Claimant he is responsible to manage science projects and the testing plan at Claimant. He stated that the whereabouts system is important for the success of the anti-doping program because it enables Claimant to test without prior notice. It is essential to test out-of-competition, randomly, and by surprise in order to assure compliance with the rules because of the existence of banned substances that can affect competition even though taken out-of-competition. He said athletes could escape testing by not showing where they will be. He was not familiar with the specifics of this case.

6.8 Lindsey Stafford, as Doping Control Manager of Claimant, manages the whereabouts filing system. She explained the filing system consistently with the testimony of Respondent. Ms. Stafford said that in order to make updating easy for athletes, updates can be filed on the on-line program, on an app, by text, by e-mail, or by telephone. She added that there are between 2,400 and 2,800 athletes filing on the system and that Claimant does not manually go through the system looking for inconsistent or incomplete filings. It is not unusual for athletes to post two locations in two states in one day. If an athlete does input to the whereabouts computer system the address of a hotel or other location at which the athlete is staying when

away from home the system does prompt the filer with a query as to whether the athlete wants to make an update to the 60-minute time slot location. Absent a specific address, or in the case of an e-mail update, there is no such prompt to the athlete. With respect to the events of April 27, 2016, Ms. Stafford stated that the e-mail from Respondent on that date saying, “Not at home. Will be in Des Moines, IA for drake relays till Sunday. Staying at the downtown Marriott.” was received by Claimant at 8:53 p.m. MDT.

6.9 Ramon Clay testified that he has known the Respondent since she was 14 years old, and that as her agent and counselor, he can vouch that she is dedicated to her sport and adamant about clean sport. He does not receive copies of the notices from Claimant or IAAF, and learned of the Incidents only after being informed by Respondent following Incident 3 in September 2016. He assisted her in providing the flight details she sent to Claimant and IAAF in October 2016.

## 7. ANALYSIS

7.1 This is a difficult case because it involves the imposition of a serious penalty on a brilliant athlete who is not charged or suspected of using banned substances of any kind. Respondent is justly admired. Respondent won an Olympic Gold medal during the months in question. She has never previously been charged with an Anti-Doping Rule violation. She successfully submitted to in-competition tests eight times and out-of-competition tests eight times during 2016. The two conceded whereabouts failures, Incidents 2 and 3, were when she was travelling to have a parade in her honor in her home town in Florida and to celebrate “Brianna Rollins Day,” and when she went to visit the White House to be feted by the President. However, while there is much at stake for Respondent, there is not much in dispute as to the facts or law of

this case.

7.2 Respondent did not contest that Incidents 2 and 3 involved whereabouts failures or that a total of three whereabouts failures within 12 months constitute an Anti-Doping Rule Violation under WADA Code Article 2.4. The parties also agreed that WADA Code Annex Article I.4.3 sets out the elements that Claimant must prove to the “comfortable satisfaction” of the Panel (WADA Code Article 3.1) for us to find that Incident 1, the alleged missed test of April 27, 2016, was the requisite third failure.

7.3 There is almost no legal precedent arising from disputed enforcement in this area. The only case brought to our attention by counsel in this matter dealing with Article I.4.3, (though not with the specific issue raised by Respondent) is Karam Gaber v. United World Wrestling (FILA), CAS 2015/A/4210 (2015). Therefore, our analysis must be based on the words of Article I.4.3 that set forth the elements of the offense as to Incident 1: “An Athlete may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:

*a. that when the Athlete was given notice that he/she had been designated for inclusion in a Registered Testing Pool, he/she was advised that he/she would be liable for a Missed Test if he/she was unavailable for Testing during the 60-minute time slot specified in his/her Whereabouts Filing at the location specified for that time slot;*

Both parties agree that Respondent was given the requisite notices.

*b. that a DCO attempted to test the Athlete on a given day in the quarter, during the 60-minute time slot specified in the Athlete’s Whereabouts Filing for that day, by visiting the location specified for that time slot;*

Claimant said that this requirement is met by the DCO’s attempt beginning at 6:56 a.m. on April 27, 2016 at her Primary Residence, the time and place shown on the quarterly whereabouts filing by Respondent and not thereafter updated. Respondent replied that this is “technically” true, but

that Respondent “reserves agreement” with Claimant on the basis that, due to no negligence on the part of Respondent, she was under the reasonable impression that when she recorded on the computer filing program that she would be at the Drake Relays in Des Moines, Iowa it would automatically remove this 60-minute time slot. Therefore, according to Respondent, she believed at the time that there was no “60-minute time slot specified” for the date in question, and therefore Claimant cannot meet this element of the offence. Respondent argues that the offense could have been declared a “filing failure” but not a missed test. We reject this argument for the following reasons:

(a) This Code subArticle does not relate to Respondent’s state of mind, her impressions, her recollection, or her intentions. Whatever her belief was, this element is met if the DCO acts in accordance with the existing “slot specified in the Athlete’s Whereabouts Filing.”

That is all the DCO is required to act on in seeking to test her. *See, also*, WADA Code Annex I Article I.1, that provides, “[I]f the Athlete is not available for Testing at such location during the 60-minute time slot specified for that day in his/her Whereabouts Filing, that failure may be declared a Missed Test.”

(b) Even if this element required that Respondent have knowledge of what was “specified” in the filing, she would have to show that her lack of knowledge was not due to her negligence. The proper place to make that showing is in response to the final element of “Missed Test,” Article I.4.3(e), which is discussed below.

*c. that during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;*

Both parties agreed that the DCO did what was reasonable. In fact, her effort to find Respondent at the airport was more than was required under the circumstances.

*d. that Article I.4.2 does not apply or (if it applies) was complied with;*

Both parties agreed that Article I.4.2 does not apply.



*e. that the Athlete's failure to be available for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at subArticles I.4.3(a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behaviour on his/her part caused or contributed to his/her failure (i) to be available for Testing at such location during such time slot, and (ii) to update his/her most recent Whereabouts Filing to give notice of a different location where he/she would instead be available for Testing during a specified 60-minute time slot on the relevant day. [underlining in original]*<sup>3</sup>

This is the heart of the defense on the merits. Respondent asserted that she was not negligent.

7.4 Respondent's burden of proof under WADA Code Article 3.1 is to show by the balance of probability that there was *no* negligent behavior on her part that *caused or contributed* to her failure to be available *and to update* her whereabouts filing. Respondent argued that the term "negligence," which is not defined in the Code, should be interpreted in accordance with the Swiss Criminal Code, which provides at Article 12(3) that, "A person commits a felony or misdemeanour through negligence if he fails to consider or disregards the consequences of his conduct due to a culpable lack of care. A lack of care is culpable if the person fails to exercise the care that is incumbent on him in the circumstances and commensurate with his personal capabilities." We are not bound by such Swiss Criminal Code provisions pursuant to IAAF Anti-Doping and Medical Rule 48:

- 1. Anti-Doping rules are, by their nature, competition rules governing the conditions under which the sport of Athletics is to be held. They are not intended to be subjected to or limited by the requirements and legal standards applicable to criminal and civil proceedings or employment matters. . .*
- 2. These Anti-Doping Rules shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or Governments.*

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<sup>3</sup> Note that this provision of Article I.4.3 conflates a missed test and a failure to update a filing as interchangeable in the violation. Thus, negligence in failing to update is actionable under the rubric of "missed test," whether or not it would also be actionable under "filing failure."

Moreover, we need not decide a matter of conflict of laws if, in fact, there is no conflict. We interpret “negligence” in its normal meaning, as a failure to observe the duty of care expected of a reasonable person similarly situated. We do not believe that this would give a different result than that of the Swiss standard.

7.5 The duty of care set out for athletes under the Code and related rules is clear: WADA Code Annex 1 Article I.3.4 provides, “It is the Athlete’s responsibility to ensure that [she] provides all of the information required in a Whereabouts Filing accurately and in sufficient detail to enable any Anti-Doping Organization . . . to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in [her] Whereabouts Filing for that day, including . . . the 60-minute time slot. . . .” The official Comment to that Article provides, in part, “Where an Athlete does not know precisely what [her] whereabouts will be at all times during the forthcoming quarter, [she] must provide [her] best information, based on where [she] expects to be at the relevant times, and then update that information as necessary . . . .” WADA Code Annex I Article I.6(b) says, “. . . Athlete remains personally responsible at all times for ensuring he/she is available for Testing at the whereabouts declared on his/her Whereabouts Filings.”

7.6 Respondent received extensive training and notifications of her responsibilities and was fully aware of her responsibilities. She knew she had to update and to do so with the full information necessary for the DCO to locate and test her. She knew each day required the filing of a completely identified 60-minute window, regardless of whether she was at home or travelling.

7.7 At the time of Incident 1, Respondent was a 25-year old adult, with years of

experience and compliance under the anti-doping rules. For her, the running career is a full-time occupation to which she is totally dedicated. We find that the level of care that is expected from a person such as Respondent is at the very least the athlete's compliance with the rules requiring accurate whereabouts information, and the athlete's being available for testing where she has declared she would be in her Whereabouts Filing.

7.8 Respondent was unable to show lack of negligence necessary to rebut the presumption of negligence under WADA Code Annex Article I.4.2(e). She reviewed her calendar on the second quarter 2016 computer filing before submitting it but failed to notice that the standing 60-minute time slot at her home was still in place for competition days, such as April 27. This failure was her fault. Whether she noticed that she had left the 60-minute time slot in place, or had removed it by use of the competition "drop down" feature (as she thought she had), she knew she was obligated to be available for testing at the whereabouts declared on her Whereabouts Filing. Therefore, at the least she knew she was required to update the record with a new time slot, and she neglected to do so. As discussed below, it does appear that the anti-doping agencies and other authorities could have done more to help her; but the duty to comply remained hers. Due to her failing to make any effort to update, as she knew the rules required, Respondent has not met and cannot meet her burden to show by a balance of probability that *no* negligent behavior on her part at least *contributed* to her failure to be available and her failure to update her whereabouts filing. We conclude that Respondent committed a whereabouts failure on April 27, 2016, and therefore committed three such failures within 12 months. She violated Article 2.4 of the WADA Code.

## 8. SANCTION

8.1 Article 10.3.2 of the WADA Code provides a two-year period of ineligibility for violations of Article 2.4, subject to reduction to no less than one year, depending on the Athlete's degree of fault. The burden is on Respondent by a balance of probability to show the absence of fault necessary to reduce the length of ineligibility.

8.2 Counsel for Claimant, in his Closing Statement, citing Marin Cilic v. International Tennis Federation, CAS 2013/A/3327, conceded that she had met her burden at least sufficiently to reduce the period to 18 months by virtue of her proof that the Incidents, while negligent, were inadvertent and did not show an intention to cheat. Counsel for Respondent argued that Cilic, as a case involving drug use, is inapplicable to a whereabouts failure case and, in the absence of other precedent directly on point, the matter of fault under Article 10.3.2 should be judged solely on the facts and circumstances of this case. He urged that any sanction be reduced to one year. We agree.

8.3 Cilic and the related cases that modified it and applied it the current WADA Code, Robert Lea v. USADA, CAS 2016/A/4371, and USADA v. Rizelyx Rivera, AAA Case No. 01-16-000-6096 (2016), were interpreting a related section of the Code applicable to doping cases, Article 10.5. The facts examined in such cases are not like the kinds of facts we are confronted with in examining fault as to Respondent's failures. There is no drug being ingested and no question of its source, its effect, or a misunderstandings about its nature. The approach which we will borrow from these cases is a willingness to consider all the surrounding circumstances, especially as they deal with Respondent's intent.

8.4 Respondent failed to fulfill her obligations in full in these three Instances. However, this is a first offense, she had been frequently tested for years, and she has a perfect

drug-free record, both in and out-of-competition. Her clean tests included an out-of-competition test on May 3, 2016 (six days after Incident 1) and an out-of-competition test on October 14, 2016 (31 and 17 days, respectively, after Incidents 2 and 3). As agreed by Claimant she shows no evidence of avoiding testing, masking drug use, or using drugs. Incident 1, the contested event, was a case involving some confusion on her part about the workings of the computer filing system. While we find she has failed to show a complete absence of negligence as to that Incident, we do note that the computer filing system and the agencies connected with it have failed to design it to assist the athletes as much as possible to avoid confusion. The program does not alert an athlete that his/her filing is showing two events on the same day in two different cities, unless the athlete has inserted full addresses for the hotel where the athlete will be staying. It could easily do that. USATF, the national governing body (“NGB”) of which Respondent is a member, received a copy of each of the agencies’ letters to Respondent charging her with first and second violations. It did nothing to inquire with its athlete as to the circumstances and to assure future compliance. The NGB left her on her own. Respondent’s own sports agency did not involve itself in her compliance activities or problems. Only after the third Incident, when it was too late, did they help her fashion her response. Also, at least as to Incidents 2 and 3, following her Olympic Gold Medal, her life was outside its usual routine. We can understand that going to Florida to have her home town celebrate her with a parade and “Brianna Rollins Day,” and to the East Coast to meet the President and receive plaudits from the nation could reasonably distract her from her quotidian (though important) responsibilities. Under these facts and circumstances, we find that Respondent has carried her burden to show the least degree of fault. Therefore, the term of her ineligibility shall be one year.

8.5 Under WADA Code Annex I, Article I.5.6, this sanction includes disqualification

of all individual results obtained by Respondent from September 27, 2016 through to the date of commencement of the ineligibility period, with all the resulting consequences, including forfeiture of any medals, points and prizes.

9. **START DATE OF SANCTION**

9.1 The WADA Code provides, under Article 10.11, that as a general matter the period of ineligibility shall start on the date of this final hearing decision subject to a credit for the period of ineligibility served under a voluntary provisional suspension agreement such as that entered by Respondent on February 13, 2017. Article 10.11.1 further provides that, “Where there have been substantial delays in the hearing process . . . not attributable to [Respondent] the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as . . . the date on which . . . anti-doping rule violation last occurred.” Respondent points out that over five months transpired from the final Incident on September 27, 2016 to the March 1, 2017 letter from Claimant to Respondent stating that, “USADA charges you with an anti-doping rule violation . . .” We agree with Claimant that the process through the early steps of this proceeding, starting with IAAF’s September 29, 2016 letter only two days after Incident 3, and ending with Claimant’s notification letter to Respondent on December 19, 2016 was conducted with due efficiency, given that the rules require waiting periods between notifications for Respondent to reply. However, after that date the further delay grew in substantiality. We agree with Respondent that she should not be penalized for the time taken after the December 19 letter in her exercising her rights to appeal to the Anti-Doping Review Board. We also note that the December 19 letter stated to Respondent, “You have the right, at this time, to voluntarily accept a Provisional Suspension,” [underlining in original] and enclosed a form for her use to do so.

9.2 We have reviewed various cases offered as precedents on this issue, but find them all to be related to sanctions for drug use violations. While, on its face, Article 10.11.1 applies to Anti-Doping Rule violations, the Article does not seem tailored to whereabouts violations that unfold over a period of as much as 12 months before the enforcement proceedings begin. An additional period of over five months in enforcement proceedings before being officially charged seems to us to be excessive. Therefore, we commence the period of ineligibility on December 19, 2016, which is the date on which Claimant was willing to stop the clock with Respondent accepting a provisional suspension.

10. **DECISION AND AWARD**

Based on the foregoing facts and analysis, this Panel renders the following decision:

10.1 Respondent has committed a doping violation under WADA Code Article 2.4.

10.2 Respondent shall be sanctioned by imposition of a period of ineligibility for one (1) year, which period is deemed to have commenced on December 19, 2016 and shall expire on December 18, 2017. During the period of ineligibility, Respondent may not compete in any competitions under the jurisdiction of the USATF, IAAF, the USOC, any other signatory of the WADA Code, any body which has accepted the WADA Code or any body whose rules are consistent with the WADA Code, or any of the clubs, member associations, or affiliates of these entities.

10.3 The parties shall bear their own attorneys' fees and costs associated with this arbitration.

10.4 The administrative fees and expenses of the American Arbitration Association, and the compensation and expense of the arbitrators shall be borne entirely by Claimant.


10.5 This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

10.6 This award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

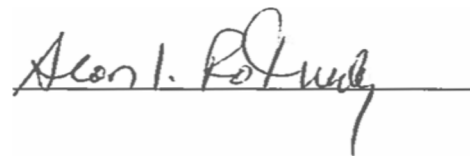
Dated: April 14, 2017



Barry A. Sanders, Chair



Maidie Oliveau



Alan Rothenberg