

GREYHOUND WELFARE & INTEGRITY COMMISSION
DISCIPLINARY ACTION DECISION

Date of decision: 1 February 2021
Decision-maker: Matthew Tutt, Director Integrity & Legal Services
Name of relevant person: Mrs Merle Clarke
Track: Mudgee
Date: 23 June 2019
Rule no.: Rule 83(2)(a)
Charge(s): (1) A greyhound registered under Mrs Clarke's trainership 'Timely Wish' ("**Greyhound**") was presented for the purposes of competing in race 6 at the Mudgee meeting on 23 June 2019 in circumstances where the Greyhound was not free of any prohibited substance.
Prohibited substance(s): Theobromine
Disciplinary action taken: 4-week suspension

REPORT:

Following receipt of a certificate of analysis from the Racing Analytical Services Laboratory, the Commission conducted an investigation into the results of a pre-race urine sample taken from the greyhound, 'Timely Wish' ("**Greyhound**") at the Mudgee meeting on 23 June 2019.

Further analysis of the sample was conducted by the Racing Science Centre, confirming the presence of theobromine.

After considering the evidence, the Commission charged Mrs Clarke with a breach of Rule 83(2)(a) of the Commission's Greyhound Racing Rules ("**Rules**") given that the pre-race urine sample taken from the Greyhound confirmed the presence of the prohibited substance theobromine.

On 3 December 2020, this matter was heard by the Commission in person. This hearing was delayed for a significant length of time due to the unavailability of a witness, and COVID-19 restrictions.

Mrs Clarke denied the charge.

DECISION:

1. Mrs Clarke is a registered greyhound trainer and the trainer of the Greyhound. The Greyhound competed in race 6 at the Mudgee meeting on 23 June 2019 (“Event”), and a pre-Event urine sample was taken from the Greyhound.
2. The pre-Event swab revealed the presence of theobromine. Theobromine is a prohibited substance under Rule 1 of the Rules.
3. A veterinary report provided as part of the evidence provided that pharmacological effects of theobromine are:

“It is known as a bronchodilator (more potent than caffeine) and vasodilator and acts on smooth muscle in the cardiovascular and respiratory systems to relax blood vessel and bronchial walls in airways. It improves airway functions in asthmatics.

Theobromine is psychostimulant and acts as a weak antagonist to adenosine in the central nervous system (CNS), in comparison to caffeine. It may combat fatigue by acting as a stimulant. It acts on the kidneys, increasing diuresis.”

4. The Commission charged Mrs Clarke under Rule 83(2)(a), which reads:
 - (2) The owner, trainer or person in charge of a greyhound-
 - (a) nominated to compete in an Event;
 - (b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or
 - (c) presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revokedshall present the greyhound free of any prohibited substance.
5. On 3 December 2020 this matter was heard by the Commission in person. Mrs Clarke was present at the hearing, with a support person and witness. Mrs Clarke denied the charge and made submissions in relation to the charge and in mitigation of penalty.
6. After considering the evidence, the Commission found the charge proven and Mrs Clarke formally guilty on the following basis:
 - the presentation of the Greyhound, trained by Mrs Clarke, for the purposes of competing in the Event;
 - the Certificates of Analysis confirming the detection of theobromine, a prohibited substance.
7. On 1 February 2021, after considering the totality of the evidence Commission took the following disciplinary action against Mrs Clarke:

To suspend her trainer registration for a period of 4 weeks.

8. In taking this disciplinary action, the Commission considered all evidence, including:
 - Mrs Clarke has been a registered trainer for over 40 years. This was considered as a significant mitigating factor in imposing a suspension of 4 weeks;
9. The Commission have adopted and imposed penalties consistent with guidelines adopted by NSW Greyhound Racing Controlling Bodies. Having regard to these guidelines, the Commission considered the imposition of a suspension of 4 weeks to be appropriate, notwithstanding Mrs Clarke's not guilty plea but taking into account other mitigating factors such as the following:
 - (i) The significant number of racing greyhounds (approximately 50) that Mrs Clarke currently trains;
 - (ii) The lack of any related disciplinary history; and
 - (iii) Mrs Clarke's good character and contribution to the industry over many years.
10. Balancing the mitigating factors, the Commission also had to consider the need for consistency in upholding the integrity and welfare of greyhounds. The Racing Appeals Tribunal has recently stated in the matter of *Cunningham* that:

"The mere ingredients of a trainer presenting to race with a prohibited substance brings into play the issues of integrity of the industry and, of course, welfare of the greyhound, as well as the aspect of what should be the consequence of any civil disciplinary penalty in providing an appropriate message to this particular appellant or trainer, to the industry at large, such as other trainers and presenters to race, as well as to the betting public and the public in general that the level playing field required by the complete elimination of prohibited substance is paramount to the integrity of the industry and that is so in various ways."
11. The Commission decision maker had regard to submissions that Mrs Clarke could not provide explanation as to how the prohibited substance, theobromine, came to be present in the greyhound. There are generally three scenarios in prohibited substance matters which have been constantly recognised by Appellate tribunals. The first scenario in which a prohibited substance may come to be present in a greyhound is that the trainer has engaged in deliberate wrongdoing. The decision maker in this matter has found no evidence that this scenario applies. The second scenario is where the decision maker is unable to discern how the prohibited substance was present in the greyhound and the third scenario is where the decision maker is satisfied that the trainer was completely blameless.
12. The decision maker in this matter finds that the second scenario applies in relation to Mrs Clarke. That is, that Mrs Clarke was simply unable to provide any evidence as to

how the prohibited substance came to be present in the greyhound. Having regard to Appellate tribunal decisions where a trainer is unable to provide any evidence as to how a prohibited substance came to be present in one of their racing greyhounds, proper consideration of the penalty involves assessment of mitigating and subjective factors, and any other factors. As is recognised, the penalty guidelines are only used as a guide as to an appropriate penalty. Theobromine is a metabolite of caffeine. For a substance regarded as a category 4, the guidelines reflect a starting point of 24 weeks disqualification. These guidelines provide a level of certainty to trainers and those who observe the industry as to what likely outcomes might flow from a breach of prohibited substance rules. The Commission decision maker has determined that a significant departure from the guidelines is warranted in relation to the present case on the basis of the mitigating factors referred to above, and having regard to similar cases imposed by the Commission including the decision of *Boersma* of 22 July 2020 in which a trainer who had trained for approximately 48 years with no prior disciplinary matters was given a 4-week suspension. In *Boersma*, the trainer pleaded guilty at the earliest possible opportunity, unlike in the present case.

13. In addition, the Greyhound was disqualified from race 6 at the Mudgee meeting on 23 June 2019 pursuant to Rule 83(4) of the Rules.

.....End.....