



## INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0060-17
Applicant's Name:	J Weidemann
Original Decision:	Breach of Rule 190(1) of the Australian Harness Racing Rules
Original Decision Makers:	N Torpey, P Zimmermann, J Hackett
Date of Original Decision:	8 August 2017
Internal Review Decision:	Original decision on charge and penalty confirmed
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	5 September 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Ms Julie Weidemann, was the trainer of FOURS ENUF TAS which presented for racing at Albion Park on 12 November 2016. A pre-race urine sample collected from the horse returned a cobalt level in excess of the permitted threshold under the rules.</p> <p>This resulted in the Applicant being charged with a breach of Australian Harness Racing Rule 190(1). The Rule states:</p> <p><i>"A horse shall be presented for a race free of prohibited substances".</i></p> <p>The specifics of the charge being the presence of cobalt above the permitted threshold in a pre-race urine sample taken from FOURS ENUF TAS at Albion Park on 12 November 2016.</p> <p>The Applicant pleaded not guilty to the charge.</p> <p>The stewards found the Applicant guilty of the charge and imposed a disqualification period of nine months.</p> <p>The Applicant seeks a review of the stewards' decision on conviction and penalty.</p> <p>The Applicant's submissions in summary state <i>"I am not guilty because the two laboratories that provided evidentiary certificates had not been approved by the controlling body as required by Rule 191. The penalty imposed is too severe. I rely on all correspondence and communications in this matter between my solicitor and Norm Torpey that touches upon the absence of the approval referred to together with all other exhibits tendered at the inquiry."</i><sup>1</sup></p>	

<sup>1</sup> Internal Review Application dated 8 August 2017



#### PART 4: Reasons for Internal Review Decision

The Applicant, Ms Julie Weidemann, was the trainer of FOURS ENUF TAS which presented for racing at Albion Park on 12 November 2016. A pre-race urine sample collected from the horse returned a cobalt level in excess of the permitted threshold under the rules.

The Racing Science Centre (RSC) and Racing Analytical Services Limited (RASL) issued a 'Certificate of Analysis' on 30 November and 16 December 2016 respectively, stating the aforementioned sample was shown to contain cobalt at a mass concentration of greater than 200 micrograms per litre in urine. Cobalt was not detected in the associated control solution.<sup>2</sup>

Subsequent to being informed of the confirmatory analysis that FOURS ENUF TAS returned cobalt levels greater than 200mg/L, the Applicant collected three samples consisting of soil, water and ant bed from FOURS ENUF TAS' stable and stable yard, which was sent to the Environmental Analysis Laboratory, Southern Cross University for cobalt testing.<sup>3</sup>

The initial test results of the aforementioned samples supplied by the Applicant to the Environmental Analysis Laboratory, Southern Cross University on 20 February 2017 consisted of black soil, ant bed and water. The laboratory reported cobalt levels of 16.9, 4.8mg/Kg and <0.001mg/L respectively.<sup>4</sup> The Applicant sent a further six samples to the laboratory on 9 March 2017 which reported cobalt levels, lucerne hay 48.8, sawdust bedding 0.6, kikuyu roots 24.4, soil (Stable yard near tree) 34.3, soil (stable) 19.3 and soil (near a wall of some other stables) 32.8mg/Kg.<sup>5</sup>

During the initial stewards' inquiry conducted on 22 February 2017, the Applicant was unable to provide an explanation for the analyst findings stating FOURS ENUF TAS was on a *"very simple but high grain"* diet.<sup>6</sup> The Applicant added *"He (FOURS ENUF TAS) does eat a lot of soil ---- He does. Even when we let him out on the grass in the stable yard he'll go down and have a bit of a dig and have a bit of a - and dig up the roots of the grass and eat the dirt."*

Dr Caldwell, Acting Manager, RSC noted cobalt is naturally occurring in the environment and as such *"present in soil and water sources at low levels."* Dr Caldwell added *"horses will normally consume enough to meet their requirements for cobalt in a normal diet ---- you wouldn't exceed a threshold feeding a normal racing diet."* Dr Caldwell further added there are *"injectable supplements"* that contain cobalt which *"can exceed the threshold"* if administered *"close enough"* (to race time).<sup>7</sup>

Mr John Hackett and Mr Simon Fletcher, members of QRIC Integrity Regulation Unit, conducted a stable inspection at the Applicant's licensed premises on 6 December 2016. The stable inspection report in summary, noted there was no intravenous injections recorded in the treatment records. The Applicant advised *"The horses were not given any IV injectables and --- was not in possession of any of these substances."* The reviewer notes there are several supplements identified at page two of the report and used tubes of oral X-3 at page four. The reviewer finds it uncommon that no injectables are stored at the stable premises, considering the number of horses (35+) the Applicant has in work.<sup>8</sup>

<sup>2</sup> Exhibit 5 and 14

<sup>3</sup> Exhibit 24 and 25. Transcript of stewards' inquiry dated 22 February 2017, page 13 and 15

<sup>4</sup> Exhibit 24 and 25

<sup>5</sup> Exhibit 21

<sup>6</sup> Transcript of stewards' inquiry dated 22 February 2017, page 17

<sup>7</sup> Transcript of stewards' inquiry dated 22 February 2017, page 20, 21 and 22

<sup>8</sup> Stable inspection report dated 6 December 2016



The reviewer further notes the treatment records are not compliant with Australian Harness Racing Rule 190B(1) which places a responsibility on trainers to maintain a log book of treatment records. Sub-section (b) in part states “*recording all details of treatment administered to any horse in his or her care and including as a minimum requirement*” sections (i) to (vi). Sub-section (3) states “*details of the treatment administered to any horse must be entered into the log book on the day of the administration.*”

In essence, the Applicant’s defence for exceeding the cobalt threshold is FOURS ENUF TAS digs holes in the stable or stable yard and eats a kilo of the dirt at a time, which contains 34.3mg/Kg of cobalt. Mr Paul O’Sullivan, legal counsel for the Applicant, stated “*---- the only explanation - that she can proffer is the soil analysis samples. It’s not a case of, “I fed it too much of this and it got elevated.” ---- The circumstances are simple. Ms Weidemann can proffer no explanation of any nature whatsoever for the elevated reading, and she’s actively gone and sought an explanation at significant cost. Now, that explanation does not take away from the strict liability nature of the offence. But it certainly goes to mitigation, in my submission. And that’s how it’s put.*”<sup>9</sup>

There is no evidence FOURS ENUF TAS exceeded the cobalt threshold in any other pre or post-race race day sample either side of the sample subject of this review. Subsequent to the Applicant being advised the soil contained 34.3mg/Kg of cobalt, FOURS ENUF TAS continued to reside in the stable and stable yard.

In weighing up the evidence, the reviewer considered, in particular, the level of cobalt detected in FOURS ENUF TAS sample (315mg/L), the average race day cobalt level (10mg/L), the Earth’s crust having an average cobalt concentration of between (20-25 mg/kg) and that FOURS ENUF TAS had not exceeded the cobalt threshold in any samples pre or post the sample subject of this review. The reviewer, in the absence of any commercial products containing cobalt being fed or administered to FOURS ENUF TAS, is not satisfied eating dirt, as described by the Applicant, is the sole reason for the analyst’s findings. The reviewer, therefore accepts the Applicant presented FOURS ENUF TAS to race with a prohibited substance in its system and confirms the decision on charge.

The Applicant’s disciplinary history is clear of any offence under the rule subject of this review. Precedents for a presentation cobalt offence within the Queensland racing industry have incurred a minimum penalty of twelve months’ disqualification.

In weighing up the matter of penalty, the reviewer acknowledges each case is treated on its merits. Cobalt is deemed a performance enhancing substance that provides participants with an unlevelled playing field and has a detrimental effect and impact on the racing industry. A penalty not only needs to be fair and evidence based, it must also serve as a deterrent to any likeminded persons. In considering all factors relevant to penalty, including mitigating factors, the reviewer is not satisfied a suspension is an appropriate penalty in the circumstances.

The reviewer finds, having considered the totality of penalties for cobalt related offences, the penalty imposed is at the lower end of the penalty scale and therefore, in the circumstances, finds a further reduction to penalty is not proven and confirms the original decision on charge and penalty.

#### **PART 5: Review Rights following Internal Review Decision**

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

<sup>9</sup> Transcript of stewards’ inquiry dated 4 May 2017, page 37



An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

**Queensland Civil and Administrative Tribunal**

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