

BEFORE NEW ERA ADR
Case No. 24062702

In the Matter of the Arbitration Between:

HIEA-YOON KANG (“**Claimant**”),

v.

USA ARTISTIC SWIMMING (“**Respondent**”),

and

NATALIA VEGA (“**Affected Party**”)

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated by New Era ADR, and in accordance with the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C., §220505 *et seq.*, and Section 9 of the United States Olympic and Paralympic Committee (“USOPC”) Bylaws, (effective April 1, 2024) and the United States Olympic and Paralympic Committee Movement Arbitration Rules (“Arbitration Rules”), having been duly sworn, and having heard and considered the arguments of the parties and their counsel during an approximately seven hour hearing held on **Thursday, July 18, 2024**, and having considered the parties’ written submissions, exhibits, and legal authorities, issue this **Final Award** as follows:

I. The Parties

Claimant Hiea-Yoon Kang is a coach and member of USA Artistic Swimming, represented by counsel Howard Jacobs, Esq. and Katy Freeman, Esq., of Law Offices of Howard Jacobs.

Respondent USA Artistic Swimming (“USAAS”), was represented by Steven B. Smith, Esq. and Suzanne Crespo, Esq. of the law firm of BCLP. Adam Andrasko, Chief Executive Officer of USAAS, appeared as party representative for USAAS. Natalia Vega, identified as an Affected Party and duly notified of her right to participate, did not appear at the hearing.

II. Procedural Background

Coach Kang filed a Complaint and Demand for Arbitration under Section 9 of the USOPC Bylaws on May 30, 2024.

The Parties participated in a hearing before the USAAS National Board of Review Hearing Panel (“Panel”) on June 26, 2024. The Panel affirmed the suspension of Claimant’s contractor agreement with USAAS (the “Agreement”).

Claimant filed an Amended Section 9 Complaint, with Exhibits 1-23, on July 10, 2024; a Pre-Hearing Brief, on July 12, 2024; and Reply Brief, with additional exhibits #24-33, on July 16, 2024.

Respondent USA Artistic Swimming, submitted a Pre-Hearing Brief (dated July 13, 2024) (with its Amended Exhibits List A-O, including various subsections); and a Response Brief, with additional exhibits P-R, on July 16, 2024).

An arbitration hearing in this matter was conducted on Thursday July 18, 2024, in accordance with Section 9 of the U.S. Olympic & Paralympic Committee Bylaws. Parties in attendance included Claimant Hiea-Yoon Kang, represented by Howard Jacobs, Esq. and Katy Freeman, Esq., of Law Offices of Howard Jacobs. Respondent USA Artistic Swimming (“USAAS”), was represented by Steven B. Smith, Esq. and Suzanne Crespo, Esq. of the law firm of BCLP. Adam Andrasko, Chief Executive Officer of USAAS, appeared as party representative for USAAS. Natalia Vega, identified as an Affected Party and duly notified of her right to participate, did not appear at the hearing. Lucy Denley, USOPC Dispute Resolution Unit, attended as Representatives with Observer Status.

The Arbitrator heard testimony from Coach Kang and Mr. Andrasko, in addition to the respective arguments of counsel. The Arbitrator acknowledges the seriousness of the concerns presented by both parties and expresses gratitude to the parties, witnesses, and capable counsel for their cooperation and professionalism.

On July 19, 2024, the Arbitrator issued an **Operative Award**, denying Claimant’s Request for Relief.

III. Factual Background

1. Hiea-Yoon Kang is a 42-year-old coach and member of USA Artistic Swimming (hereinafter “USAAS”). Coach Kang started artistic swimming at age 8, competed in the sport at The Ohio State University, and has a long career serving as head and assistant coach for multiple age group national teams. She is currently the head coach of the La Mirada Aquabelles.

2. On October 24, 2022, USAAS received a complaint regarding alleged psychological and emotional abuse by Coach Kang. USAAS notified the U.S. Center for SafeSport (Center), which subsequently notified USAAS that it was electing to exercise discretionary jurisdiction over the allegations which do not involve allegations of sexual misconduct or child abuse. USAAS notified Coach Kang that a SafeSport complaint had been filed against her. Coach Kang did not receive any communications from SafeSport with respect to this complaint against her for nearly 17 months. Neither the Center nor USAA imposed any restrictions at that time. USAAS stated that this complaint was based almost entirely on one report.

3. In July 2023, Coach Kang entered into a USAAS Contractor Agreement, accepting the position of Senior National Team Assistant Coach for the term July to October 2023 (C-#3). On March 15, 2024, USAAS renewed Coach Kang’s contract for the term February through August 2024 (C-#4). The Contractor Agreement states “Position will be a contractor, which means you or the organization are free to terminate the relationship at anytime and for any reason.” *Id.* It

also details Coach Kang's responsibilities and requires compliance with all applicable USAAS policies and protocols, among these including being subject to the jurisdiction of the US Center for SafeSport and the USAAS Athlete Safety Policy.

4. On January 24, 2024, USAAS published an announcement "*Hiea-Yoon Kang to Return . . . to Join Senior National Team Coach Staff for Olympic Games Push*," on TEAM USA Artistic Swimming's website. The announcement indicated that "[K]ang will join the staff immediately to support the team at World Championships . . . and [this] position[] is contracted through the 2024 Paris Olympic Games." (C-#16).

5. Coach Kang testified that she had "numerous conversations" with the Head Coach and High Performance Coach, where they discussed preparing for Paris and indicated that she would be selected as a U.S. Olympic Team Assistant Coach and that she was tasked by the Head Coach with working closely with the Duet in the lead up to the Olympics. Coach Kang testified that she completed Registration paperwork for Paris 2024.

6. Coach Kang satisfied the Criteria for Assistant Coach under USAAS Games Staff Selection Procedures for the 2024 Olympic Games in possessing a high level of technical expertise and knowledge of the sport, having traveled to previous international championships, and being currently employed or contracted for the USAAS National Team. (2.28-2.30).

These Procedures also state, in part:

#3 "Games Staff position(s) will be filled by current USAAS employees and/or contractors."

#4.4 "Removal of Games Staff: Violation of the USAAS's Code of Conduct"

8. "Nominations of Games Staff . . . will be submitted to the USOPC on or before: May 1, 2024."

Mr. Andrasko testified that Coach Kang's name was submitted on the "short list" of Games Staff sent to the USOPC on May 1, 2024. He denied that she was "formally nominated" in the final lists that were submitted later in June due to 2024 competition schedules.

7. Coach Kang traveled with the team as Senior National Team Assistant Coach to the 2024 World Aquatics Artistic Swimming World Cup in Paris, France, which took place from May 3-5, 2024, and returned with the team on May 6, 2024. She was to start her work with the Duet at the Team's first practice on May 9, 2024.

8. Upon her return from Paris, Coach Kang received an email from Scott Reid, a self-described "investigative reporter and Olympic reporter for the Orange County Register." Reid requested comments on a list of allegations involving SafeSport complaints "from at least 12 swimmers and parents .. detailing more than 70 specific allegations over the course of the past 13 years." (R-#K) Coach Kang promptly notified and sought guidance from Mr. Andrasko, who expressed concern to the effect that "[i]f this article were to come out, the allegations, the Coach's name and club, could link Coach to USAAS" and thus bring problematic attention to the organization.

9. In a May 8, 2024 email to the Center, subject: Seeking Guidance, Mr. Andrasko wrote:

“I need you to please direct me to the correct department or person for this type of advise ment. The Center has jurisdiction of a case. The person in that case is a contract employee of mine. I would like to discuss what actions I can and can’t take.” (R-#R)

A May 9, 2024 (3:21 pm MST) Response from Jocelyn Shafer at the Center stated:

“
[REDACTED]
[REDACTED]
[REDACTED]”

10. By letter to Coach Kang dated May 9, 2024, USAAS stated that it would be “indefinitely suspending” her contract:

“USAAS has received allegations of concerning behavior that has taken place outside of the national team setting. These allegations are concerning enough that at this time the organization feels that an indefinite suspension is necessary. This will remain in place until the conclusion of the Center for SafeSport’s interview and determination process is complete. Upon completion USAAS will reassess the contractor/organization relationship.”

USAAS then cited sections from its policies, including compliance with the SafeSport Code and USAAS Athlete Safety Policy. (C-#5)

11. No hearing was provided to Claimant prior to the imposition of this sanction.

12. On May 18, 2024, the Reid article “*La Mirada artistic swimming coach on U.S. Olympic staff is suspended amid investigation of abuse complaints: Hiea-Yoon Kang was appointed to the U.S. Olympic team coaching staff despite many reports to SafeSport since 2022.*” was published in the Orange Counter Register. The article reports on alleged psychological misconduct, bullying, body-shaming that dates back 13 years ago, but also states that “[a]s many as 18 swimmers, including former and current U.S. national team members, have filed complaints with the U.S. Center for Safe Sport since 2022, according to interviews and Safesport documents.” The article quotes USAAS CEO Andrew Andrasko saying that “he was notified on May 8 by SafeSport of additional allegations against Kang ‘that were much more concerning. Still these are just allegations ... This is not an admission of Coach Kang’s guilt. But at the end of the day, my responsibility is to the safety of the athlete.”

13. USAAS agrees the suspension was a direct result of USAAS becoming aware of an article that was to be published later in the OC Register.

14. After the contract termination and after she had filed her initial Section 9 Complaint, USAAS offered Claimant a hearing before the USAAS National Board of Review Hearing Panel composed of USAAS’s Ethics Chair, Past President, and Athlete Representative

(“USASS Panel”). A hearing was held on June 26, 2024. The Panel issued an operative award on June 27, 2024 followed by a final award on July 9, 2024 (collectively, the “Decision”), affirming the suspension of Claimant’s contractor agreement with USAAS (the “Agreement”). The Panel Decision (R- #B) stated that:

1. The Amateur Sports Act (“ASA”), did not apply to Ms. Kang because she had not been named to the US Olympic Team Coaching Staff, and therefore the ASA did not cover her position for coach of a protected competition, and thus USAAS had the authority to handle its own employment issues and suspend Ms. Kang on May 9 “for any reason” due to the at-will provision in the contract.

2. Even if the ASA applied, USAAS had the authority to suspend Ms. Kang’s contract, according to the Center’s (June 2024) clarification that NGBs are able to make employment decisions on matters over which the Center has exercised exclusive jurisdiction. Thus, the temporary suspension of Ms. Kang’s contract was in compliance with USAAS Athlete Safety Policy. The Panel also determined that any “gaps” in the USAAS policy could be “properly filled by provisions in the SafeSport Code,” citing Section XII(A)(2) of the 2023 Code (“Three Factors”) to evaluate when implementing temporary measures.

3. The temporary suspension imposed meets at least one of the three requirements set out in Section IV, Rule 40(e) of the SafeSport Code, which applies subsidiarily to the USAAS Athlete Safety Policy.

4. Therefore, the grievance filed by Ms. Kang is dismissed and her employment contract remains suspended.

15. As a result of this indefinite suspension by USAAS, Coach Kang will be prevented from serving as a coach at the 2024 Olympic Games, which is a Protected Competition.

16. Coach Kang received nothing from the Center regarding the 2022 or May 2024 allegations, until after USAAS sent a notice to SafeSport regarding the allegations reported in the OC Register article in May 2024 and indefinitely suspended Coach Kang’s Contract.

17. On June 18, 2024, the Center issued a “Confidential Notice of Allegations (Case # [REDACTED]) *In re: Hiea-Yoon Kang.*” The Notice provided to the Arbitrator in this case was redacted but does list allegations of emotional and physical misconduct “[REDACTED]” that may violate the SafeSport Code (2021, 2022). Although the Center has authority to implement temporary measures (Code, Sec. XII) pending its investigation and resolution of the allegations, the redacted Notice did not indicate that the Center had issued any temporary measures. This was the first notice Coach Kang received from SafeSport.

IV. Summary of Party Contentions

A. Claimant Kang

Claimant Kang has asserted a claim under Section 9 of the USOC Bylaws for violation of the statutory opportunity to participate in a Protected Competition. Claimant contends that despite previously advising her that she would be selected for this position, USAAS refused to name Ms. Kang as Olympic coach in violation of the Ted Stevens Olympic and Amateur Sports Act (hereinafter “Amateur Sports Act or ASA”), the USOPC Bylaws, USA Artistic Swimming’s

own Bylaws, and the SafeSport Code.

Claimant also alleges that USAAS lacked authority to investigate or adjudicate the allegations that formed the basis of its removal of her from her position as Olympic coach. Claimant alleges that the 36 U.S.C. § 22054(a) of the ASA, confers exclusive jurisdiction on the Center to investigate and resolve abuse allegations, including the authority to issue temporary measures, which the Center has not done. Further, NGBs cannot interfere in or attempt to influence any outcome of the Center. Claimant contends that USAAS lacked authority to issue temporary measures such as indefinite suspension because the Center had assumed exclusive discretionary jurisdiction in 2022. Further, had the Center imposed temporary measures, Kang would have been afforded a hearing on those actions before an independent arbitrator under the SafeSport Code, IXX.A.4. Here, USAAS, and not the Center, issued the temporary measures.

Claimant also submits that although she exhausted her administrative remedies, the hearing before the USAAS Panel does not preclude her right to seek relief under the ASA or Section 9 of the USOPC Bylaws.

Claimant requests that the arbitrator find that the USAAS May 9, 2024 refusal to name her as Olympic coach, despite previously advising her that she would be selected for this position, violates the ASA, the USOPC Bylaws, USA Artistic Swimming's own Bylaws, and the SafeSport Code. Claimant requests to be named to the Paris 2024 Games Staff roster and is amenable to any safety measures the Arbitrator finds appropriate.

B. Respondent USAAS

Respondent submits that the Complaint should be dismissed for lack of subject matter jurisdiction, citing *Hamza v. US Fencing*, where the arbitrator upheld the termination of a coach's contract, even where the contract term ran through the Olympics, because it did not give rise to a denial of the opportunity to participate. Alternatively, the Complaint must be denied because USAAS' actions were authorized (1) under the terms of the at-will employment contract; (2) employment decisions do not infringe on Center jurisdiction; and (3) the Center had not asserted exclusive jurisdiction over the May 2024 allegations and thus USAAS was authorized to issue temporary measures which were warranted under the USAAS Safety Policy, SafeSport Code, and (4) it's actions were not arbitrary, capricious, but rather justified in light of the severity of the allegations per the "Three Factors" in SafeSport Code Rule Sec. IV 40(e).

V. Jurisdictional Matters and Standard of Review

A. Section 9 Subject Matter Jurisdiction

Acknowledging that the Center has exclusive jurisdiction over investigating and resolving any allegations regarding violation of the SafeSport Code,¹ this arbitration did not

¹ The Center has the exclusive jurisdiction to investigate and resolve allegations regarding sexual misconduct; and discretionary jurisdiction over, *inter alia*, emotional and physical misconduct, including stalking, bullying behaviors, hazing, and harassment. SAFESPORT CODE FOR THE U.S. OLYMPIC AND PARALYMPIC MOVEMENT, IV.B.C (April 1, 2023) (2023 Code).

address the merits, or lack thereof, of any allegations reported in the OC Register article or to the Center. This Section 9 hearing is authorized under the ASA and USOPC Bylaws, relating to the alleged denial of the opportunity to participate in a Protected Competition. The Arbitrator has jurisdiction to resolve the parties' dispute, specifically, whether Respondent has denied Claimant the opportunity to participate under Section 9.2 of the USOPC Bylaws.

B. Standard of Review

The standard of review in Section 9 cases is *de novo* in that the arbitrator provides an independent assessment of the evidence, testimony, and arguments presented in this case and reviews this dispute anew. *See Mitchell v. USTAF*, 01-23-0002-1602, p.6 (2023) (citing *Merson*); *Claimants v. USA Taekwondo, Inc.*, AAA Case. No 01-19-0000-5335, p12 (2019). I review this with no deference to the decision below, subject to the respective burdens of proof outlined below.

VI. Findings

A. Section 9 Subject Matter Jurisdiction is Warranted in this Case

Respondent's Motion to Dismiss for Lack of Section 9 Subject Matter Jurisdiction is Denied. The *Hamza v. USFA*, AAA No. 77-190 E 00002 12 JENF, ¶ 27 (Feb. 9, 2012) case cited by Respondent in support of the motion is inapposite here. The arbitrator in *Hamza* held that the termination of a coach's contract pursuant to its terms "does not rise to the level of a denial of the opportunity to participate," even though the contract ran through the Olympics. There, the coach had performance issues, which are not at issue in this case, and did not implicate the Center's jurisdiction. Further, the arbitrator in *Hamza* did not state that Section 9 jurisdiction was lacking or that she was without authority to render such an award. That a Section 9 claim fails does not vacate jurisdiction. As USOPC Arbitration Rule 19 authorizes the Arbitrator to rule on their own jurisdiction, I accordingly rule that Section 9 jurisdiction is appropriate.

B. Section 9 and the Amateur Sports Act Apply to Kang's Complaint

In implementing the statutory protection required under the ASA, 36 U.S.C. § 220509, USOPC Bylaw Section 9.1 provides that:

"No member of the [USOPC] may deny or threaten to deny any Amateur Athlete the opportunity to participate in an upcoming Protected Competition ... [and] The [USOPC] will, by all reasonable means, protect the opportunity of an Amateur Athlete to participate **if selected (or to attempt to be selected to participate) in a Protected Competition**. In determining reasonable means to protect an athlete's opportunity to participate, the [USOPC] will consider its **responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership**." (Emphasis added)

"Any reference to athlete in this Section 9 will also equally apply to any **coach**, trainer, manager, administrator or other official." *Id.*

Under Section 9.2 Denial of Opportunity to Participate, “Any athlete who alleges that they have been denied ... an opportunity to participate ... may seek to protect their opportunity to participate by filing a complaint with the corporation, and may make a subsequent demand for arbitration, all as set out in the USOPC Dispute Resolution Policy.”

Claimant has the burden of proof to establish coverage under the ASA and Section 9. This standard is in accordance with Section 9 jurisprudence generally requiring the Claimant to prove that [the NGB] violated applicable federal laws (e.g., Ted Stevens Olympic and Amateur Sports Act), or state laws, which may include breach of contract and law of private association if an NGB fails to follow its own policies or procedures or where the NGB’s conduct or action was arbitrary and capricious. *Mitchell* cited the *Merson* decision, noting that “a discretionary decision of an NGB maybe challenged and set aside under Section 9 of the USOPC Bylaws” when, *inter alia*, the NGB fails to follow its own rules or procedures, or “[i]f the decision is one that no reasonable decision maker could have made or was arbitrary and capricious (not simply that reasonable minds could differ on the outcome) or was based on fraud, corruption, malice, bad faith, or illegality.” *Mitchell v. USATF*, *supra* at p.6.

A Section 9 Claim/ASA involves three elements (1) the athlete/coach was “selected or attempt to be selected” to participate; (2) in a Protected Competition; and (3) the [NGB] [wrongfully or unlawfully] denied them the opportunity to participate. Accordingly, Coach Kang must establish that she is “covered” within the meaning of Section 9; in a Protected Competition; and wrongfully denied the opportunity to participate, such as the grounds cited above. Here, the parties stipulate that the Paris 2024 Olympic Games are a “Protected Competition.” Second, Claimant met the burden to establish that she was a “coach” selected to participate in the Paris 2024 Games. Although the Hearing Panel said the ASA did not apply because Coach Kang was an Independent Contractor under an at-will “employment” contract and had only an “expectation” to be named to the Olympic coaching staff, the evidence showed that her name had been submitted/nominated, and but for the OC Register article, she was going to coach at the Paris 2024 Olympic Games. Therefore, the federal ASA applies, notwithstanding the at-will provision in the contractor agreement.

While the ASA and Section 9 apply, Claimant has to show that the denial of her opportunity to participate was arbitrary, irrational, or unlawful. Here, Claimant has alleged that the USAAS denied the opportunity for a hearing, which was belatedly but ultimately provided in the Hearing Panel administrative hearing. Claimant also alleges, however, that the USAAS was without authority to issue temporary measures, including the suspension, due to the Center’s exclusive jurisdiction over allegations involving SafeSport Code violations. Claimant further alleges that Scott Reid has serially reported scandals involving NGBs later proven unfounded, that some NGBs have not suspended coaches while SafeSport allegations remained pending, and thus that USAAS was arbitrary in its reliance on a dubious media report to form the basis of her suspension. For the reasons set out in the analysis below, the Arbitrator finds that Claimant has not established that USAAS wrongfully denied her an opportunity to participate in the Paris 2024 Games.

C. USAAS's Issuance of Temporary Measures Was Authorized

1. *Did USAAS have authority to impose Temporary Measures, including suspension of Claimant, pending Center's resolution, due to the May 2024 OCR allegations?*

A determination of whether USAAS's issuance of temporary measures in the form of the indefinite suspension was unlawful, or arbitrary and capricious, and therefore a denial of Coach Kang's statutory right to participate in the Paris 2024 Games, involves an analysis of the ASA's interaction with the SafeSport Code and the Center's exclusive and discretionary jurisdiction.

As noted, in this Section 9 arbitration, the arbitrator is not reviewing the underlying allegations that were reported to Safesport in 2022 and in May 2024. USOPC Bylaw 9.11 ("An allegation or decision concerning a SafeSport rule violation that is either accepted under the jurisdiction of the [Center] ... is not reviewable through, or the subject of, these Bylaws.").

Here, the question is when allegations are reported and pending (even for an extremely long duration without communication to the parties), and newer allegations are reported, does the NGB have authority to take action on the "new" allegations? Do the new May 2024 allegations fall within and "relate back" to the date of the Center's 2022 acceptance of jurisdiction?

2. *Applicable SafeSport Jurisdiction Rules and Timing of "Expressly Exercising Jurisdiction Over Particular Allegations"*

The Center has exclusive jurisdiction to investigate and resolve allegations regarding sexual misconduct; and discretionary jurisdiction over other prohibited conduct, such as emotional and physical misconduct. This case involves the Center's discretionary jurisdiction. When the Center expressly accepts jurisdiction, NGBs are precluded from investigating this matter or taking action that may restrict the opportunity to participate. A critical distinction on an NGB's authority to issue temporary measures involving non-sexual misconduct allegations lies in the timing of when the Center "expressly exercises jurisdiction over the particular allegations." SafeSport Code (2023), Sec. V.

Section IV of the 2023 Code sets forth "JURISDICTION OF THE CENTER" as follows:

A. Exclusive Jurisdiction. The Center has the exclusive jurisdiction to investigate and resolve allegations that a Participant engaged in (sexual misconduct);

B. Discretionary Jurisdiction. The Center has discretionary jurisdiction to investigate and resolve allegations that a Participant engaged in . . . "2. Emotional and physical misconduct, including stalking, bullying behaviors, hazing, and harassment...." If the Center accepts discretionary jurisdiction, it will use the resolution procedures set forth [in the Code]. (Emphasis added)

Section V of the 2023 Code details "JURISDICTION OF THE USOPC, NGBs, and LAOs":

A. Before the Center expressly exercises jurisdiction over particular allegations

regarding a particular Participant, the relevant organization [NGB] has authority to implement necessary and appropriate measures, up to and including a suspension to address any allegations of misconduct.

B. When the [NGB] has reason to believe the allegations presented fall within the Center’s exclusive jurisdiction, the organization – while able to impose measures – may not investigate or resolve those allegations.

C. When the allegations presented fall within the Center’s discretionary jurisdiction, the organization may investigate and resolve the matter, unless and until such time as the Center expressly exercises jurisdiction over the particular allegations.

D. The Center will issue a Notice of Exercise of Jurisdiction to the [NGB] when the Center determines it has jurisdiction over an allegation of Prohibited Conduct. When the Center expressly exercises jurisdiction over particular allegations regarding a particular Participant, the [NGB] cannot issue – in response to those allegations – a suspension or other restriction that may deny or threaten to deny a Respondent’s opportunity to participate in sport. The [NGB] may implement any necessary safety plan(s) or temporary measure(s). The NGB shall inform the Center of any safety plan(s) or temporary measures(s) it or its LAO imposes within 72 hours of imposition. (Emphasis added)

3. *NGB’s Burden to Establish Authority to Issue Temporary Measures*

Claimants v. Taekwondo, AAA Case. No 01-19-0000-5335 (Mar. 19, 2019), addressed a similar question “[r]egarding the scope of the U.S. Center for SafeSport (“Center”)’s exclusive authority over alleged sexual abuse allegations in Olympic sports; a National Governing Body (“NGB”)’s authority to impose interim measures to protect the safety of its athletes, including an indefinite suspension of those accused of sexual misconduct pending final disposition of these allegations by the Center or their arbitral or judicial resolution; and the procedural rights of NGB members (e.g., athletes or coaches) accused of sexual misconduct.” The Arbitrator indicated that the NGB has the burden of proving by a preponderance of evidence that it had authority to impose interim measures on its athletes and coaches pending final disposition of an alleged SafeSport violation. Although *Taekwondo* involved interpretation of the 2018 SafeSport Code, whereas this case involves application of the 2023 Code in effect at the time of Claimant’s suspension, the burden of proof aspect does not change.

Accordingly, USAAS has the burden of proof to establish it had authority to issue temporary measures, including indefinite suspension, when SafeSport exercised jurisdiction.

4. *USAAS Established it Had Authority to Impose Temporary Measures over the May 2024 Allegations*

a. The Center did not Exercise Jurisdiction over the “Particular” May 2024 Allegations Until June 2024

Here, neither of the parties provided the specific “Notice of Exercise of Jurisdiction” the Center would have issued and sent to USAAS to confirm its acceptance of discretionary jurisdiction in 2022. However, USAAS testimony stated that the Center took jurisdiction over the original allegations against Claimant in 2022. The Center’s May 9, 2024 email in response to Andrasko’s question asked “Does this relate to the same case?”

Yet the Center issued no notice, communication, or temporary measures regarding Coach Kang, until it sent “Notice of Allegations” on June 18, 2024. This was *after* USAAS reported the May 2024 OC Register article allegations. The Center’s June 2024 “Notice of Allegations” to Kang references a 2022 case number. However, it is unclear whether this 2022 exercise of jurisdiction thereby encompassed the new “particular” allegations that were made in the OC Register article on May 18, 2024.

The Center took no action for over 16 months over the original allegations. USAAS said those allegations were relatively minor and found no reason to take action based on the then single 2022 allegation. SafeSport does not have a process for an NGB to seek an emergency temporary measures hearing with SafeSport when new allegations arise. USAAS’ CEO expressed the concerns he faced in the position of learning about serious, albeit then unverified, emotional/physical abuse allegations lodged against a National Team Coach, the NGB’s limited ability to investigate such allegations, and the duty to protect the athletes and organization against potential risks and liability. The USAAS CEO testified that the May 2024 allegations involved dramatically more serious allegations involving multiple athletes and multiple alleged instances of misconduct. USAAS sought guidance from the Center and understood they could take employment action, despite a case pending with the Center since 2022.

It appears that the Center did not exercise jurisdiction over the “particular” May 2024 allegations USAAS reported to the Center until June 18 2024, when the Center issued its first notice to Coach Kang in the “Notice of Allegations.” Again, because the Notice was redacted, it is unclear whether the May 2024 allegations were included in the Center’s June 2024 notice. But USAAS issued its temporary measures in May 9, 2024, *before* the Center’s June notice, in accordance with NGB authority under 2023 Code, **Section V**.

b. In issuing temporary measures, USAAS sought to comply with SafeSport procedures for issuing temporary measures. Claimant was provided an internal hearing before USAAS Hearing Panel.

Although addressed to the SafeSport temporary measures process, Section XII(A)(2) of the 2023 SafeSport Code states that when implementing temporary measures, the Center must evaluate whether:

- (i) the measure is reasonably appropriate based on the seriousness of the allegations and the facts and circumstances of the case;
- (ii) the measure is reasonably appropriate to maintain the safety or well-being of the Claimant, other Athletes, or the sport community; or

(iii) the allegations against the Respondent are sufficiently serious that the Respondent's continued participation in the sport could be detrimental to the best interest of sport and those who participate in it. ("Three Factors")

This section pertains to the arbitration process to evaluate when the Center imposes temporary measures, and counsel for Coach Kang rightfully noted that the Center would have likely investigated the allegations beyond a single media report.

Yet given the near two years since it assumed jurisdiction over the 2022 complaint, the Center took no action. When USAAS learned of and reported the 2024 allegations to the Center, USAAS requested guidance regarding its authority to address employment matters. The CEO testified that USAAS considered it urgent to address the "more concerning" May 2024 allegations to protect the safety and wellbeing of the athletes and organization. He also considered this within the rights under the contract and NGB's authority to take employment action of Coach Kang.

In issuing temporary measures, USAAS sought to comply with SafeSport procedures for issuing temporary measures. Claimant was provided an internal hearing before USAAS Hearing Panel. The Hearing Panel found that any gaps existing in the USAAS Athlete Safety Policy could be filled by provisions in the SafeSport Code and thus determined that:

[G]iven the high-profile media coverage of abuse allegations that were under ongoing investigation, USAAS had reason to believe that Ms. Kang's continued employment with the Senior National Team Coaching Staff would raise concerns with respect to item (ii) above. **Extensive media coverage of abuse allegations of a coach in an Olympic year would potentially endanger the psychological safety of the Olympic team Athlete Safety Policy was the basis for their suspension of the contract.**

Here, the temporary measures were rational and within the "Three Factors," due to the sufficient seriousness of the allegations, however unproven at this time. USAAS was within its authority to issue the temporary measures in connection with the May 2024 allegations to safeguard the interests of the athletes and sport community. The Center had not expressly exercised jurisdiction over these newly reported allegations. *USA Taekwondo, supra* at 18 similarly ruled that the same requirements can be considered in that Section 9 proceeding involving an NGB's authority to impose temporary measures, including suspensions, pending the Center's final resolution of the allegations.²

5. *The Temporary Measures Here Were Not Unlawful, Irrational, Arbitrary or Capricious*

USAAS believed it was also authorized to take employment action, notwithstanding the above analysis, and that such action was necessary to protect the psychological safety of its athletes and the organization. The 2024 SafeSport Code clarifies that after the Center takes jurisdiction over allegations, "The relevant organization may implement any necessary safety

² The 2018 Code in effect at the time in *USA Taekwondo* provided this NGB authority upon "notice of imminent threat of harm." This "imminent" standard is not in the 2023 Code and not at issue in the facts raised in this case.

plan(s), temporary measure(s), or make employment or membership decisions . . .”, indicating that USAAS had authority to suspend the Agreement. *See also* 2024 Center Noteworthy Revision (clarifying an NGB’s right to take employment actions).

An at-will employment contract, however, does not obviate an NGB’s responsibility to comply with the ASA when such right to participate is established. USAAS’ actions, which had the effect of denying Coach Kang’s opportunity to participate in the Paris 2024 Games, were authorized under the SafeSport Code and cannot be deemed “arbitrary or capricious.” According to its Athlete Safety Policy, USAAS “is committed to providing a safe environment for its members, athletes, coaches, officials, volunteers and employees.” Given the serious nature of the allegations mentioned in the OCR article, again however unproven, USAAS was limited in its ability to “investigate” the veracity of these claims. It reasonably opted to err on the side of caution to protect the potential risks to its athletes and the organization.

The Center for SafeSport is an independent organization authorized under federal law with exclusive jurisdiction over the investigation and resolution of allegations of sexual misconduct and other forms of abuse within Olympic and Paralympic sports. Once the Center accepts jurisdiction, the NGB is required to defer to the Center regarding the investigation and resolution of the matter. The Center’s jurisdiction does not completely divest NGBs of authority to take temporary measures, such as suspensions, to protect athletes and ensure a safe environment while the Center’s investigation is ongoing, stalled, or where the Center had yet to “exercise jurisdiction” over the particular May 2024 allegations.

In accordance with its Athlete Safety Policy, USAAS issued temporary measures to safeguard participants and to ensure the safety and well-being of athletes. Practically and as a matter of policy, an NGB, on notice of serious allegations of misconduct involving one of its members, cannot sit and wait potentially years for the Center to respond. Given the serious and specific nature of the new allegations, which the NGB learned of for the first time in May 2024, again however unproven, USAAS reported the allegations to the Center, and before the Center issued the June 2024 Notice of Allegations, issued temporary measures. This action was not arbitrary or capricious to constitute a Section 9 violation.

6. *Less Restrictive Safety Plan Measures Are Not Practical At This Time*

Coach Kang was suspended, effective May 9, 2024. The arbitration hearing in this matter occurred July 18, 2024. The Olympic Games start July 26, 2024. She has been informed of no restriction as of yet from SafeSport. Claimant has requested that the Arbitrator order a less restrictive temporary measure (*i.e.*, “requiring that all of her activities as Olympic team coach be under the supervision/observation of another adult Participant”) or chaperone. She testified that she has had numerous conversations with the Head Coach wanting to bring her back and help the team with her technical expertise. An athlete team member also wrote an affidavit in support of having Coach Kang in Paris. USAAS CEO disputed that the Head Coach has requested Kang’s return. He testified that adding Coach Kang to the Olympic team, with the serious allegations unresolved, would pose detrimental impacts on the team’s ability to focus, was not practical in terms of the limited staff resources available to assign a chaperone, and risks to potential loss of sponsorships and philanthropic fundraising. He added, that the culture of sport has to be right.

ACCORDINGLY, The Arbitrator Rules for that:

A. Claimant's requested relief to be named to the Paris 2024 USAAS Coaching Staff is Denied.

B. Claimant's request for a less restrictive temporary measure is not tenable at this time and therefore Denied.

C. The parties shall bear their own attorney's fees and costs associated with this arbitration;

D. The administrative fees of New Era and the compensation of the Arbitrator shall be borne as in accordance with the USOPC DRU policy; and

E. This Award shall be in full and final resolution of all claims and defenses submitted to this Arbitration. The Arbitrator has considered all the arguments made by the parties, whether or not specifically referenced in this Award. All claims not expressly granted herein are hereby denied.

IT IS SO AWARDED.

Dated: July 24, 2024

Maureen Weston

Arbitrator