

**American Arbitration Association  
Commercial Arbitration Tribunal**

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In the Matter of the Arbitration between

TEDDY MITCHELL,

Claimant

and

USA TRACK & FIELD,

Respondent

AAA Case Number: 01-23-0002-1602

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**FINAL AWARD OF ARBITRATOR**

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This case is being held pursuant to and in conformance with the American Arbitration Association's ("AAA") Commercial Arbitration Rules (effective September 1, 2022) ("**AAA Rules**"), the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, *et seq.* (the "**Ted Stevens Act**"), the United States Olympic and Paralympic Committee ("**USOPC**") Bylaws (effective April 1, 2023) ("**USOPC Bylaws**") and the USOPC Dispute Resolution Policy (effective April 1, 2023) ("**USOPC Dispute Policy**"). An evidentiary hearing was held via video conference on September 29, 2023, before the duly appointed arbitrator Gary L. Johansen.

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties do hereby FIND and AWARD as follows:

**I. THE PARTIES**

1. Teddy Mitchell ("**Mitchell or Claimant**") is a member of USA Track & Field.
2. USA Track & Field ("**USATF**" or "**Respondent**"), is the National Governing Body ("**NGB**") for the sport of track and field in the United States, as recognized by the USOPC pursuant to the Ted Stevens Act and Section 8 of the USOPC Bylaws.
3. Mitchell and USATF shall be referred to collectively as the "**Parties**" and individually as a "**Party**."

4. Both Mitchell and USATF were represented by counsel in this matter.<sup>1</sup> Mitchell was represented by Howard L. Jacobs, Esq. and Katy Freeman, Esq. of the Law Offices of Howard L. Jacobs. USATF was represented by Steven B. Smith, Esq. and Suzanne Crespo, Esq. of the law firm of Bryan Cave Leighton Paisner.

## II. PROCEDURAL BACKGROUND

5. On May 11, 2023, Mitchell filed a Complaint pursuant to Section 9 of the USOPC Bylaws (“**Section 9 Complaint**”) and Demand for Arbitration (“**Demand**”) with the USOPC and the AAA.
6. The claims against USATF are set forth in Mitchell’s Statement of the Dispute, which was attached to Mitchell’s Section 9 Complaint.
7. USATF filed an Answer with Affirmative Defenses on June 7, 2023.
8. Included as part of its Answer and Affirmative Defenses, USATF filed an Application for Motion to Dismiss pursuant to R-34 of the AAA Rules.
9. USATF, in its Application for Motion to Dismiss, stated that it was requesting to file the Motion on the basis that Mitchell’s Section 9 Complaint and Demand were untimely filed. USATF cited Section 9.9 of the USOPC Bylaws,<sup>2</sup> which states:

Time Bar. A claim against a respondent [NGB] will be prohibited unless filed with the arbitrator no later than 180 days after the alleged date of denial and the competition that is the subject of the dispute is still upcoming.
10. After considering USATF’s request, the Arbitrator on June 15, 2023, granted USATF’s Application to file a Motion to Dismiss.
11. The Parties submitted briefs in support of and in opposition to the Motion to Dismiss. Oral Argument was held on August 31, 2023.
12. The Arbitrator denied the Motion to Dismiss on September 4, 2023. *Mitchell v. USATF*, Case No. AAA 01-23-0002-1602, (Decision on Motion to Dismiss, Sept. 4, 2023).
13. A briefing schedule and a date for the hearing on Mitchell’s Complaint was set forth in Preliminary Hearing and Scheduling Order Number 1 issued on July 11, 2023. By

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<sup>1</sup> The Arbitrator expresses his appreciation for counsel’s professionalism and excellent advocacy during this arbitration proceeding. Counsel’s briefs and argument were extremely well presented and proved of significant help to the Arbitrator in considering the issues and rendering a decision.

<sup>2</sup> The language of Section 9.9 of the USOPC Bylaws is also set out in Section 2.H. of the USOPC Dispute Policy.

Agreement of the Parties the briefing schedule and date for the hearing as set forth in Scheduling Order Number 1 were amended.

14. On September 20, 2023, the Parties submitted their exhibits and a list of their witnesses.
15. On September 22, 2023, the Parties submitted simultaneous pre-hearing briefs.
16. On September 28, 2023, the Parties informed the Arbitrator that they had come to a “general agreement” regarding the burden of proof and the standard of review. Further, the Parties indicated their agreement that the Arbitrator’s review of this matter would be based on the record of Mitchell’s 2022 reinstatement request. The Parties indicated that they were in agreement regarding the exhibits to be considered by the Arbitrator, except for forum/social media posts and articles pertaining to USATF that Mitchell wanted to introduce. Further, the Parties indicated that they would not be calling any witnesses or presenting any witness testimony pursuant to affidavit at the hearing. Finally, the Parties indicated that they would present their positions relative to Mitchell’s claim and USATF’s defense via oral argument.
17. On September 29, 2023, the Arbitrator held an evidentiary hearing by video conference. The hearing lasted approximately 3 hours.
18. Counsel for the Parties presented argument at the hearing. The AAA Manager of ADR Services opened the hearing. Additionally, Teddy Mitchell, Claimant; Sarah Austin, Esq., USATF Senior Corporate Counsel; Leah Bernhard, Esq. of the Law Offices of Howard L. Jacobs; Lucy Denley, USOPC Manager, Dispute Resolution; and Sarah Brown, USOPC Legal Intern, attended the hearing as observers.
19. At the commencement of the hearing the Arbitrator took up the matter of exhibits. After hearing from the Parties, the Arbitrator ruled to admit into evidence Mitchell’s exhibits consisting of forum/social media posts and articles. However, the Arbitrator indicated that at this juncture of the hearing he was not certain of what value they would have or how relevant or material they would be to the dispute. However, the Arbitrator indicated that the Parties should have a full and fair opportunity to present their cases, and that he would consider and give the contested exhibits offered by Mitchell whatever weight they deserved. The other exhibits the Parties had agreed upon prior to commencement of the hearing were admitted into evidence without objection.
20. The Parties gave arguments and presented their positions on Mitchell’s claim and USATF’s defense, and on other various issues that arose during the hearing. The Arbitrator asked questions, which the Parties responded to.

21. The rules of evidence were not strictly enforced, and rules of evidence generally accepted in administrative proceedings were applied.<sup>3</sup>
22. The Parties declined to submit post-hearing briefs.
23. At the conclusion of the hearing the Arbitrator inquired of the Parties whether they had “further proofs to offer or witnesses to be heard.”<sup>4</sup> The Parties indicated that they did not.
24. The Arbitrator declared the hearing closed as of September 29, 2023.<sup>5</sup>

### **III. JURISDICTION, BURDEN OF PROOF AND STANDARD OF REVIEW**

#### **A. Jurisdiction**

25. This matter is properly before the AAA and this Arbitrator.
26. Section 220509(a) of the Ted Stevens Act states that:

The [USOPC] shall establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to complaints of retaliation or the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, the Parapan American Games, world championship competition, or other protected competition as defined in the constitution and bylaws of the [USOPC].

27. The USOPC has established such provisions in Section 9 of its Bylaws.
28. USOPC Bylaw Section 9.1 states:

No member of the [USOPC] may deny or threaten to deny any Amateur Athlete the opportunity to participate in an upcoming Protected Competition nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. 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

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<sup>3</sup> R-35(a) of the AAA Rules provides that, “Conformity to legal rules of evidence shall not be necessary.”

<sup>4</sup> R-40(a) of the AAA Rules provides that, “The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard.”

<sup>5</sup> R-40(a) of the AAA Rules provides that, “Upon receiving negative replies [that the parties have further proofs to offer or witnesses to be heard] or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.”

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.

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

29. USOPC Bylaw Section 9.2 further states:

Any athlete who alleges that they have been denied, or threatened denial, by a corporation member an opportunity to participate as established by Section 9.1 of these Bylaws, may seek to protect their opportunity to participate by filing a complaint with the [USOPC], and may make a subsequent demand for arbitration, all as set out in the USOPC Dispute Resolution Policy. An athlete competing in a team sport, where the team as a whole is affected, may bring a claim on behalf of the team.

30. Additionally, USOPC Bylaw Section 9.6 states:

If the complaint is not settled to the athlete's satisfaction the athlete may file a claim with the arbitral organization designated by the corporation Board against the respondent for final and binding arbitration. If an impending competition requires immediate resolution of the complaint, an athlete may file a claim with the arbitral organization simultaneously with the filing of the complaint with the corporation.

31. Also, Section 330522(4)(B) of Ted Stevens Act places certain requirements upon an organization to be recognized as an NGB. One of those requirements is that an NGB:

(4) agrees to submit to binding arbitration in any controversy involving —

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(B) the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, upon demand of the [USOPC] or any aggrieved amateur athlete, coach, trainer, manager, administrator or official, which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council, as modified and provided for in the [USOPC's] constitution and bylaws ....

32. Mitchell is currently ineligible to serve as a USATF team staff member, which includes serving as a USATF team coach, and as a member of a USATF committee. Mitchell desires to be eligible for selection, or have the opportunity to be selected, as a member of the coaching staff for numerous protected competitions, including but not limited to, the Olympic Games, the Pan American Games, World Championships, and team selection camps. Because Mitchell is “permanently prohibited from participating” in these events as a team staff or committee member, this matter involves his ability to participate in protected competitions.
33. Also, neither Party disputed the AAA’s jurisdiction over this matter or that Mitchell and USATF are properly subject to this proceeding. Both Parties participated in this proceeding without objection.<sup>6</sup>
34. Additionally, neither Party objected to the Arbitrator designated to hear this matter.
35. Accordingly, the AAA and the Arbitrator have jurisdiction over this matter.

B. Burden of Proof and Standard of Review

36. As stated previously, the Parties came to an agreement prior to commencement of the hearing concerning the burden of proof and standard of review. The Parties concur that *Merson* should apply to and guide the Arbitrator in this proceeding. *Merson* provided that the claimant has the burden of proving his or her claim by a preponderance of the evidence. *Id.* at ¶ 4.1. *Merson* also stated, “The applicable standard of review in Section 9 cases is, and long has been, *de novo*.” *Id.* at ¶4.1. However, *Merson* further stated that “a discretionary decision of an NGB maybe challenged and set aside under Section 9 of the USOPC Bylaws” on the following grounds:
  1. If the published criteria do not have a rational basis;
  2. If the decision is not taken by the duly constituted decision maker or decision making body in accordance with the published selection policy or procedure announced in writing in advance or if the policy or procedure has been misapplied;
  3. If the duly constituted decision maker or decision making body has been shown to have been biased or showed bias, or the decision process has been demonstrably unfair as applied;
  4. If the decision has been shown to have been taken in retaliation for an action or actions of the party on the receiving end of the decision to their detriment; or

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<sup>6</sup> R-7(c) of the AAA Rules requires that, “A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection.”

5. If 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.

*Id.* at ¶ 5.5.

#### **IV. BACKGROUND/FACTUAL SUMMARY**

##### **A. Introduction**

37. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced during the pendency of this arbitration proceeding. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceeding, this Award only refers to the submissions and evidence necessary to explain the Arbitrator's reasoning. The facts presented or relied upon by the Arbitrator may differ from one side or the other's presented version. That is the result of the Arbitrator necessarily having to weigh the presented evidence in providing the basis for and in coming to a decision as to the Award.

##### **B. Mitchell's Involvement with USATF**

38. During the reinstatement hearing Mitchell testified to the following.
39. Mitchell participated in seven National Teams as an athlete: three as a junior and four as a senior.
40. Mitchell served as a member of the USATF Athlete's Advisory Committee from 2000 to 2016. He also served as a member of USATF Men's Track and Field Committee from 2004 through 2019. Additionally, he served on the USATF Men's Long Distance Running Committee.
41. Mitchell was selected as a USATF National Team Coach eight times.

##### **C. Prior Proceedings**

42. For an understanding of the issues relative to this case, it is helpful to provide the following information concerning the various proceedings that preceded this arbitration.

a. 2019 USATF NABR Grievance Hearing

43. When Mitchell was not selected in 2018 by USATF to coach the U.S. National Team at three upcoming events (the 2019 Lima Pan American Games, the 2019 Doha IAAF World Championships and the 2020 Tokyo Olympic Games) (also referred to as the Big Three), he filed a grievance pursuant to Regulation 21 of the 2019 USATF Governance Handbook (“**Regulation 21**”) on June 18, 2019, with USATF, against certain USATF members alleging (*inter alia*) breach of confidentiality, retaliation and violation of bylaws. Among other varied and numerous requests for relief, Mitchell requested that he be added as the Men’s and Women’s Endurance Coach for the U.S. Teams competing at the 2019 Doha IAAF World Championships and the 2020 Tokyo Olympic Games.
44. A USATF National Athletics Board of Review (“**NABR**”) Grievance Panel (“**Grievance Panel**”) held a hearing on July 16, 2019, on Mitchell’s grievance, and on July 26, 2019, issued its decision. The Grievance Panel denied “all relief sought by” Mitchell.
45. Additionally, the Grievance Panel *sua sponte*<sup>7</sup> found that Mitchell “made disparaging comments and statements of infidelity in regards to [X]” during the proceeding. Without further elucidation, the Panel concluded that “Complainant’s behavior making statements not related to [g]rievance in regards to [X’s] alleged relations/infidelity” exhibit “(*conduct detrimental to the best interests of Athletics or USATF*).” As a result, the Panel issued the following disciplinary measures against Mitchell:
  - a) Mitchell’s membership in USATF was suspended from July 26, 2019, to December 31, 2020.
  - b) Mitchell was permanently prohibited from participating in USATF “Team Staff, Committee involvement” effective July 26, 2019; and,
  - c) Mitchell was ordered to pay for USATF’s “documented costs or expenses directly related to the disputed issues” and “hearing filing fees” but not attorney’s fees.

Grievance Panel Decision, p. 2.

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<sup>7</sup> USATF never filed a grievance (disciplinary measure) pursuant to Regulation 21 of the 2019 Governance Handbook against Mitchell relating to his conduct. Rather, the Grievance Panel, as part of the June 18, 2019, grievance filed by Mitchell, issued disciplinary measures against Mitchell.



b. 2019 USATF NABR Appeal Hearing

46. On August 23, 2019, Mitchell filed an appeal of the Grievance Panel’s decision with the USATF pursuant to Regulation 21 of the 2019 USATF Governance Handbook.
47. A hearing on Mitchell’s appeal was held on October 30, 2019, before a USATF NABR Appeal Panel (“**Appeal Panel**”) and on November 10, 2019, the Panel issued its decision. The Panel denied Mitchell’s appeal finding that “Mitchell has failed to carry his burden of showing that the decision being appealed was clearly erroneous.”

Appeal Panel Decision, p. 6.

c. 2022 USATF NABR Reinstatement Hearing

48. On June 13, 2022, Mitchell filed a request for reinstatement with USATF pursuant to Regulation 22 of the USATF 2022 Governance Handbook (“**Regulation 22**”).<sup>8</sup> The issue presented in the request was whether Mitchell should be reinstated and allowed to participate going forward in USATF activities and events as a team staff member and as a committee member.
49. A hearing on Mitchell’s request for reinstatement was held on November 1, 2022, by a USATF NABR Reinstatement Panel (“**Reinstatement Panel**”), and on November 14, 2022, the Panel issued its decision. The Panel recommended<sup>9</sup> that Mitchell “not be reinstated at this time. The Panel’s findings and recommendations are as follows:

This NABR panel finds that the testimony and previous hearings were consistent with the operational guidelines outlined in Regulation 21 and Regulation 22 of USATF Rules of Governance.

Inasmuch, based on the information presented by all parties who testified in this hearing, we find that Mr. Mitchell has represented himself as angry at individuals associated with USATF and at the processes that exist within USATF. It is our concern that, if he were reinstated, he will not be able to effectively represent the athletes in an objective, professional, and productive manner. As well, he has not demonstrated to this body that he can work effectively within the organization that exists within USATF to promote positive change on behalf of athletes. Serving on a USATF committee or and

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<sup>8</sup> Although Mitchell represented himself in both the Grievance proceeding and Appeal proceeding, he was represented by counsel in the reinstatement proceeding.

<sup>9</sup> USATF Regulation 22 provides that the recommendation shall be sent to the USATF Board for consideration, and that the Board shall either “accept, deny or modify the recommendation.” There is no evidence that this was ever done. However, the Parties have agreed that the Reinstatement Panel’s decision shall be considered a final decision of the USATF for purposes of this Section 9 Complaint and Demand.

as coach requires that a person in leadership works tirelessly for the betterment of the athletes and the sport within the governing system that exists. Mr. Mitchell's lack of remorse and demonstrated inability to change his subjective beliefs on an issue in an effort to act objectively for the good of all involved, was not demonstrated in this hearing. As well, Mr. Mitchell's lack of apologies and his stated position that apologies to the offended parties and unsubstantiated accused are not part of his process demonstrates that he continues to hold grudges against those with different views, and that he is not willing to compromise his beliefs. In this panel's view, the abilities to compromise with others and build relationships with others are important for individuals in a well-functioning organization. Mr. Mitchell's actions, stated beliefs, and anger demonstrate that his reinstatement would likely detract from USATF. His admission that he continues to believe that leadership within USATF is corrupt makes it more likely than not that Mr. Mitchell's involvement in USATF activities will result in the undermining and thwarting of the forward mobility and progress the organization strives to accomplish.

Therefore, because of the aforementioned rationale, it is the recommendation of this panel that Mr. Mitchell not be reinstated at this time, based on our findings considered through the testimony heard in this current reinstatement hearing.

Reinstatement Panel Decision, p. 3.

## **V. DISCUSSION AND ANALYSIS**

### **A. USATF Regulation 22**

50. Regulation 22 states:

#### **REGULATION 22 REINSTATEMENT**

- A. Scope: This regulation governs reinstatements of any athlete declared ineligible by an NABR panel or Association, or any person or entity otherwise declared ineligible, suspended, or expelled by USATF or the USOPC. It does not govern reinstatements for doping-offense penalties, which are governed by Regulation 20.
- B. Reinstatement requests: A person or organization suspended, expelled, or declared ineligible to participate may, at any time, make a reinstatement request, provided all USATF appeals have been exhausted or waived. If a

reinstatement request is denied, a subsequent request may only be made one (1) year or more after the decision.

C. Automatic reinstatement: Any person or organization declared ineligible to participate in USATF or Athletics for a definite period, or suspended from USATF or Athletics for a definite period, shall be automatically reinstated upon written request after the period of ineligibility or suspension concludes, provided that any conditions or tasks required in the initial disciplinary decision have been fully complied with.

D. Procedures:

1. Requests for reinstatements: Except for automatic reinstatements a request for reinstatement shall be made by written application filed with the CEO. The reinstatement request shall detail the reasons advanced for reinstatement.

2. Referral and review of reinstatement request: The CEO, after consulting with the General Counsel, shall refer all reinstatement applications to the NABR panel in the applicant's region (see Regulation 21-B) for a hearing. The CEO may assign a USATF representative to take part in the hearing under Regulation 21-E-3. The hearing shall be held by telephone conference call. The panel shall make its findings and recommendations within fifteen (15) days after the hearing.

E. Disposition of reinstatement request: The panel shall send its findings and recommendations to the CEO, who shall distribute copies to the Board for consideration. The Board shall consider the recommendation at or before its next regularly scheduled meeting, and may accept, deny, or modify the recommendation.

B. Mitchell's Case

51. The following are the submissions of Mitchell as understood by the Arbitrator.

52. At the outset, Mitchell makes it clear that he is not asking this Arbitrator to name him to a USATF team staff position (coach of a USATF team) or appoint him as a USATF committee member. He is only asking to be eligible to be considered for those positions. Mitchell indicates that he fully understands that he may never be selected or appointed.

53. Mitchell must be reinstated based upon the factors as applied under *Merson*. The Reinstatement Panel's decision has no rational basis, as there were no criteria or any guidance as to what is required of him to gain reinstatement. Considering the evidence before the Reinstatement Panel, the Reinstatement Panel's decision is one that no

reasonable decision maker could have made. Accordingly, the Reinstatement Panel's decision should be set aside, and Mitchell should be reinstated.

54. Under *Merson*, the Arbitrator is not obliged to give absolute deference to the determination of the Reinstatement Panel.
55. Neither USATF nor Regulation 22 provided Mitchell with objective standards for reinstatement, or any guidance whatsoever, in what he would have to do to be reinstated. As a result, the Reinstatement Panel's decision concerning his reinstatement was completely discretionary, and not based on any criteria. Based on this alone, the Panel could not have made, and did not make, its decision in accordance with any reinstatement policy or procedure.
56. Section 220522(10) of the Ted Stevens Act states that an NGB must ensure that selection criteria for individuals and teams that represent the United States are "fair," "clearly articulated in writing and properly communicated ... in a timely manner" and "consistently applied." USATF's position that it doesn't have to have criteria in reinstatement proceedings is in violation of the Ted Stevens Act, since there is no reason that this same requirement wouldn't apply in reinstatement proceedings that determine whether an individual is eligible for selection to a team.
57. Since there are no published criteria for Mitchell to address, or for the Reinstatement Panel to consider, the Panel's decision can have no rational basis.
58. It is not clear to Mitchell what he needs to do to get reinstated. He has been and continues to be put in the position of having to guess at what would justify his reinstatement, and then make his request for reinstatement based on that guess. If he guesses wrong as to what factors the Reinstatement Panel might consider, he will need to wait another year under Regulation 22 before he can submit another request for reinstatement. Mitchell should not have to continually go through the reinstatement process without any standards or criteria ever being provided to him.
59. The best-case scenario would be for criteria to be set out in Regulation 22. But at a minimum USATF should have provided him with some guidance as to what he has to show to be reinstated. However, USATF never did so, and there is no indication that they will do so if he reapplies for reinstatement.
60. The Reinstatement Panel's written decision denying him reinstatement doesn't provide criteria as to what he has to do in the future to get reinstated. Even today, Mitchell has no idea what criteria are required for reinstatement or what criteria a reinstatement panel would consider in a subsequent reinstatement request.

61. USATF didn't follow Regulation 22 in denying his reinstatement request. Regulation 22 provides that the Reinstatement Panel's "recommendation" shall be sent to the USATF Board for consideration, and that the Board shall either "accept, deny or modify the recommendation." There is no evidence that the Panel's recommendation regarding Mitchell was ever sent to the Board or that the Panel's recommendation was ever considered by the Board. But even if the recommendation had been sent to the Board, any Board decision would also have been made without consideration of any objective criteria, since the Board itself has no standards upon which to review reinstatement panel recommendations.
62. The Reinstatement Panel indicated that Mitchell should have apologized to individuals at USATF, but he did not do so. Reinstatement should not be based on making wholesale apologies to individuals chosen by USATF, when there was no prior indication prior to the reinstatement hearing that such apologies were required for reinstatement. Placing an unknown condition on Mitchell's reinstatement is not reasonable.
63. The Reinstatement Panel found that Mitchell refused to agree with the current direction of USATF and support USATF's leadership. Different views about the direction of an organization do not inherently undermine the organization but can strengthen and make it better. It is not reasonable to deny Mitchell's reinstatement because he has opinions about the direction of USATF that differ from those in leadership roles. Strong leadership embraces differing views. Weak leadership tries to stifle it. Criticism of USATF and its leadership should not banish him from participating as a team staff member or serving on a committee.
64. The Reinstatement Panel in its decision found that Mitchell refuses to agree with the decisions of the USATF Grievance Panel and the USATF Appeal Panel. Although Mitchell accepts those decisions, he does not believe that they were correct. It is not reasonable that Mitchell has to endorse the decisions of the Grievance and Appeal Panels in order for him to be reinstated.
65. Mitchell is being treated differently than other members of USATF who are similarly situated. Many individuals within USATF disagree with the direction the organization has taken and question the organization's leadership. However, those individuals are not banned from serving on team staff positions or precluded from committee participation. Mitchell should be treated no differently than those other individuals who have expressed their disagreement with the direction of USATF.
66. Other than the four emails Mitchell sent out after his suspension, dated November 15, 2019, December 1, 2019, February 5, 2020, and May 22, 2020, the Reinstatement Panel did not consider Mitchell's conduct or behavior since his suspension.

67. If the Arbitrator finds in Mitchell's favor, this case should not be remanded back to a USATF reinstatement panel. The Arbitrator has authority under the Ted Stevens Act and USOPC Bylaw Section 9 to render a decision as to whether Mitchell should be reinstated. In most Section 9 cases the arbitrator makes a final and binding decision.
68. The three cases cited by USATF for remand, *Vanderwier v USA Archery*, AAA Case No. 01-23-0001-6017 (Interim Award, April 10, 2023), *Manderfield v. USA Cycling*, AAA Case No. 01-22-0004-0893 (September 27, 2022) and *Huck v. USA Cycling*, AAA Case No. 01-21-0004-3201 (June 29, 2021) are not controlling. In *Vanderwier*, the case was remanded because the arbitrator found that the hearing panel was improperly constituted, as no athlete representative was appointed to the panel. The arbitrator ordered that the case be remanded and heard by a hearing panel with the appointment of the necessary athlete representatives. In *Manderfield* and *Huck*, the selection committee breached a discretionary element of the approved and published procedures and, thus, these cases were remanded back to the selection committee with instructions to consider specific criteria. The Reinstatement Panel in Mitchell had no criteria to consider, so there is nothing for the Panel, or for a newly constituted reinstatement panel, to reconsider.
69. If the Arbitrator determines to remand the case back to USATF, the Arbitrator would have to craft specific criteria and then order the Reinstatement Panel, or the newly constituted reinstatement panel, to consider those criteria.

C. USATF's Case

70. The following are the submissions of USATF as understood by the Arbitrator.
71. Mitchell cannot meet his burden that the Reinstatement Panel's decision lacked a rational basis, or was a decision that no reasonable decision maker could have made or was arbitrary and capricious.
72. A review of the Reinstatement Panel's decision shows that the Panel listened very closely to the testimony presented at the hearing. It also shows that the Panel gave serious consideration to Mitchell's presentation regarding the team staff and committee privileges he was seeking to have reinstated. The Panel's decision was supported by the evidence presented.
73. Mitchell sent out four emails dated November 15, 2019, December 1, 2019, February 5, 2020, and May 22, 2020. These emails were considered by the Reinstatement Panel in making its decision not to reinstate Mitchell. In the emails Mitchell made vicious and damaging statements about individuals associated with USATF and about USATF and its leadership. In addition to making new unfounded claims, Mitchell continued to repeat many of the allegations that resulted in his suspension. Mitchell continued to contend that allegations he had made about a number of people in the Grievance proceeding were true.

Further, Mitchell continued to challenge the findings made by the Grievance and Appeals Panel. These emails are indicative of Mitchell's mindset, telling of his conduct, and reveal his anger towards USATF and provide a valid basis for the Reinstatement Panel's decision to deny reinstatement.

74. Mitchell's contention that USATF Regulation 22 does not provide objective standards for reinstatement is not a basis to set aside the Reinstatement Panel's decision. Regulation 22 provides that the applicant's request shall "detail the reasons advanced for reinstatement." Mitchell had every opportunity to make his case.
75. Requiring Regulation 22 to have criteria for reinstatement doesn't make any sense. An individual can be expelled from USATF membership or have certain privileges taken away for many reasons. Reinstatement proceedings cover a variety of cases. It isn't workable to have one set of criteria that would apply to all types of cases.
76. USATF disputes Mitchell's claim that the Reinstatement Panel's finding says that only USATF members who agree with the current direction of USATF should be eligible for team staff and committee involvement. The Panel did not say that a USATF member has to agree with USATF on everything. The Panel is pointing to the particular nature of Mitchell's disagreement, in which Mitchell claims that he was retaliated against and that USATF and its hearing process was corrupt.
77. The Reinstatement Panel's conclusion that Mitchell's beliefs about USATF and its leadership, and his actions, stated beliefs and anger were supported by the evidence submitted in the reinstatement proceeding and warranted the Panel's finding that Mitchell should not be reinstated.
78. Mitchell's statements at his reinstatement hearing need to be taken in context. Mitchell came across at the hearing as being angry at many individuals, including USATF leadership. He continued to assert that he was retaliated against and that USATF was corrupt. This was after Mitchell had already been sanctioned by the Grievance Panel for making baseless allegations. This is very different than having a calm and reasonable disagreement about USATF's direction or offering criticism in an attempt to better the organization. Therefore, what Mitchell says and how he says it has a bearing on whether he should be reinstated.
79. Mitchell is not being treated differently than other members of USATF who are similarly situated, as Mitchell contends. Mitchell's situation is unique. First, Mitchell has expressed a very personal anger against USATF and its leadership based on unsubstantiated claims. Although others may have criticized USATF or its leadership, they did not do so by touting baseless claims. Second, Mitchell is seeking reinstatement. Mitchell is under permanent suspension for his conduct in 2019 and he is trying to demonstrate that he should get those privileges back.

80. Under *Merson*, “deference must be shown to the NGB and its decision-making process.” *Id.* at ¶ 5.3. As long as an NGB decision is the product of applying its policy and process as published, fairly and in good faith, the NGB’s decision should be accorded utmost respect. In making its decision the Reinstatement Panel exercised its knowledge of the sport of track and field and the qualities necessary to serve as a team staff member and on a committee. The Panel heard Mitchell’s live testimony and listened to the arguments of both Mitchell and USATF. The Panel concluded that Mitchell had not shown that he was fit for reinstatement. The Panel’s determination should be given deference and upheld.
81. A number of court cases have found that deference should be given to a decision of a voluntary organization, such as USATF. Those include *Givens v. Marion Superior Court*, 117 N.E.2d 553, 555 (Ind. 1954) (a voluntary association “may, without direction or interference by the courts, for its government, adopt a constitution, by-laws, rules and regulations which will control as to all questions of discipline, or internal policy and management, and its right to interpret and administer the same is as sacred as the right to make them”) and *Art Gaines Baseball Camp, Inc. v. Houston*, 500 S.W.2d 735, 740-41 (Mo. App. 1973) (stating, “In the final analysis, the court must determine if the board’s action is so willful and unreasoning, without consideration of the facts and circumstances, and in such disregard of them as to be arbitrary and capricious. Where there is room for two opinions on the matter, such action is not ‘arbitrary and capricious,’ even though it may be believed that an erroneous conclusion has been reached.”).
82. If the Arbitrator finds in Mitchell’s favor, the matter should be remanded back to a USATF reinstatement panel. Where an NGB committee or panel exercises its discretion, such as in this case, the appropriate remedy, where an Arbitrator finds that the panel or committee’s decision had no basis or was not reasonable, is to remand. In the *Vanderwier*, *Manderfield* and *Huck* Section 9 cases, after considering the merits of the case, the arbitrators remanded the case back to the NGB selection committee.
83. This case is a review of the record of Mitchell’s request for reinstatement, or an appeal of the Reinstatement Panel’s decision, and so the proper remedy is to remand, not to grant Mitchell the relief he requests, which is reinstatement.

D. Decision

84. Prior to the hearing on the merits Mitchell and USATF agreed that the burden of proof and standard of review set forth in *Merson* should apply to and guide the Arbitrator in this proceeding. Further, Mitchell and USATF agreed that the Arbitrator should base his decision on a review of the record of Mitchell’s reinstatement request. Also, no new evidence was submitted at the hearing, except for forum/social media posts and articles pertaining to USATF that the Arbitrator allowed Mitchell to introduce.



85. *Merson* provides that the claimant, or in this case Mitchell, has the burden of proof beyond a preponderance of the evidence. *Merson* further provides that the claimant, or in this case Mitchell, must prove that:
- 1) the published criteria do not have a rational basis;
  - 2) the decision is not taken by the duly constituted decision maker or decision making body in accordance with the published selection policy or procedure announced in writing in advance or if the policy or procedure has been misapplied;
  - 3) the duly constituted decision maker or decision making body has been shown to have been biased or showed bias, or the decision process has been demonstrably unfair as applied;
  - 4) the decision has been shown to have been taken in retaliation for an action or actions of the party on the receiving end of the decision to their detriment; or,
  - 5) 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.
86. At the outset, the Arbitrator notes that the above criteria were utilized by the arbitrator in *Merson* in reviewing USA Taekwondo's determination to select a candidate, other than Merson, for nomination as the U.S. member to the International Taekwondo Union Board. That is not this case. Mitchell's request for reinstatement is not a selection case. Here, the Arbitrator is not reviewing whether USATF rightly or wrongly selected one candidate over another, but whether Mitchell should be "eligible" for selection to a USATF team staff or committee. There is a difference. Here, the Arbitrator is not evaluating one candidate over another or substituting his judgement whether one candidate should be selected over another, which, as stated in *Merson* is "a decision better left to relevant decision makers with expertise in the sport ...." *Id.* at ¶ 5.5. In a selection case, which usually involves athlete selection, the individuals who make the selection have particular knowledge and expertise, especially in discretionary selections, as to an athlete's skill and performance; that is, how well does the athlete measure up against other athletes, how well will the athlete do in the competition for which the athlete is being selected. In this case, the issue is much different, which is should Mitchell have the opportunity to be selected, not whether he is better qualified than another individual to be selected. Even if eligible, Mitchell may never be selected to a team staff position or as a committee member.
87. Thus, not all of the factors set out in *Merson* easily apply to this case. A different question is presented here than what was considered in *Merson*. That being the case, however, the Arbitrator has attempted to utilize the *Merson* factors in reviewing and coming to a decision regarding the Reinstatement Panel's determination not to restore Mitchell's eligibility to serve as a team staff member or as a member of a committee. Thus, the issue

before the Arbitrator is whether the Reinstatement Panel, considering all of the factors before it, had justifiable reason, based on *Merson*, not to reinstate Mitchell's eligibility.

88. Of the five factors presented in *Merson*, Mitchell relies on the first, second and fifth as set out above. Mitchell's position is that since there were no "published criteria" for Mitchell to respond to or for the Reinstatement Panel to consider, the Panel's decision had no rational basis. Further, since there was no "published ... policy or procedure announced in writing in advance" of the hearing, the Panel's decision could not have been taken in accordance with such policy or procedure and therefore it also fails for having no rational basis. Lastly, Mitchell contends that the Panel's 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)." Mitchell does not rely on the third and fourth factors set out in *Merson* that the Panel was "biased" or that the decision taken by the Panel "was taken in retaliation" against Mitchell.
89. USATF's position is that Mitchell has not proven, and cannot prove, that the Reinstatement Panel's decision did not have a rational basis or that it was arbitrary and capricious. USATF contends that the Panel considered all of the evidence before it and made a reasonable and rational decision based on that evidence. Further, it is the position of USATF that the Panel's decision should be given deference and not interfered with merely because "reasonable minds could differ on the outcome."
90. Turning to Regulation 22, the Arbitrator commends USATF for having a process and providing an opportunity for individuals who have been declared ineligible, suspended, or expelled to be reinstated. This is no small thing and is in line with the guiding principles of the Ted Stevens Act and USOPC Bylaws that individuals should have the opportunity to participate and that if that opportunity is curtailed or taken away, procedures are in place to resolve any dispute regarding such participation in a fair and equitable manner.
91. However, Mitchell asserts that neither Regulation 22 nor USATF provided him with objective standards for reinstatement, or any guidance whatsoever, in what he would have to do to be reinstated. Without such criteria or guidance, Mitchell argues that he is at a loss as to what he needs to do to show to be reinstated. The crux of Mitchell's position relating to Regulation 22, and the procedure followed in his reinstatement hearing, is twofold. First, since he was given no notice prior to the hearing of what the Reinstatement Panel would consider, or what he needed to do to be reinstated, he is denied his opportunity to make his case. Second, without any criteria or guidance, Mitchell contends that the Panel could render its decision on anything; factors which would be relevant to his reinstatement or not. Thus, Mitchell argues that the decision of the Panel was purely discretionary and is without a rational basis.
92. USATF responds that Regulation 22 provides that a "reinstatement request shall detail the reasons advanced for reinstatement" and so Mitchell had every opportunity to make his

case. Further, USATF provides that reinstatement proceedings cover all types of matters, and so from a practical standpoint, it would make no sense, and would be impossible to set out criteria for every type of matter that would come up in a reinstatement hearing. USATF points out that this is not similar to a selection case, where specific criteria can be crafted for selection to a specific team event or competition.

93. The Parties' positions highlight the unresolved tension evident in Regulation 22 matters.
94. Merely, providing that an applicant can make his or case regarding his reinstatement does not give an applicant much guidance in knowing what will be considered or what he should present to the reinstatement panel to gain reinstatement. Also, USATF provided no explanation in this arbitration proceeding as to what Mitchell would have to do in order to be reinstated. At the very least, Regulation 22 could provide some general criteria or guidelines that would be considered. Further, the Arbitrator notes that Regulation 22 provides that in cases where a person is declared ineligible to participate or suspended for a definite period of time, the individual shall be automatically reinstated, "provided that any conditions or tasks required in the initial disciplinary decision have been fully complied with." If the Grievance Panel had provided conditions or tasks that Mitchell should have taken to gain reinstatement, that would have been helpful to him in requesting reinstatement, but it was not done, nor was it required under Regulation 22.
95. In reviewing the decision handed down by the Reinstatement Panel, the Arbitrator determined that the Panel gave four primary reasons for denying Mitchell's reinstatement. First, that Mitchell "represented himself as angry at individuals associated with USATF and at the [hearing] process" by which he was suspended. Second, that Mitchell did not apologize to offended parties. Third, that Mitchell cannot "effectively represent athletes in an objective, professional and productive manner" or "promote positive change on behalf of athletes." Fourth, that Mitchell's disagreement with USATF leadership and the direction of USATF "will result in the undermining and the thwarting and the forward mobility and progress the [USATF] strives to accomplish."
96. The four reasons will be considered in turn. Of note, the only person who testified at the Reinstatement hearing was Mitchell. USATF provided no witnesses, however it did produce as exhibits the four emails sent by Mitchell dated November 15, 2019, December 1, 2019, February 5, 2020, and May 22, 2020.
97. In reviewing the reinstatement hearing transcript, Mitchell clearly stated that he disagreed with the decisions of the Grievance Panel and Appeal Panel. He also indicated his resentment at the individuals who sat on those Panels. However, the Arbitrator does not find that disagreement with the Grievance and Appeal Panels' decisions, which resulted in Mitchell's suspension, or harboring some anger against the individuals who handed down those decisions, is a rational basis for denying reinstatement. Individuals often disagree with and contest judicial decisions. In Mitchell's eyes the decisions were unfair,

or as he testified “wrong.” In USATF’s eyes the decisions were fair and correct. Both opinions are right as the parties perceive the factors leading to those opinions.

98. As to the apologies, although the Reinstatement Panel may have felt that it was reasonable for Mitchell to make such apologies, Mitchell could not have known this prior to the reinstatement hearing. Further, Mitchell would not have known with any certainty who he was to apologize to. If this was a requirement for reinstatement, Mitchell should have been informed prior to the hearing so that he could have acted, or not acted, as he saw fit. Or the Reinstatement Panel could have indicated to Mitchell that his reinstatement would be contingent on his apologizing to certain named individuals. That was not done. Denying Mitchell’s reinstatement because he failed to apologize to unnamed individuals, when there was no indication that his reinstatement hinged on such apologies, cannot serve as a rational basis for denying Mitchell’s reinstatement.
99. Regarding Mitchell’s ability to represent athletes, Mitchell’s testimony at the hearing indicates that he took this responsibility seriously. During direct examination Mitchell testified, “Well, I have always been in the sport to be about what’s best for the athletes ....” And further in a response during direct examination Mitchell stated as follows:

Q And you feel that given your background as a national team athlete as well as long-standing committee member and national team coach that you can fill that role and provide, you know, the athletes' perspective, be a voice for the athletes?

A Absolutely.

100. Also, in Mitchell’s testimony responding to a question asked by one of the Reinstatement Panel members, Mitchell responded as follows:

Q So my question is how do you plan let's say because you want to be reinstated and you are going to be seeing the same people, how do you plan -- and one of the things that I know you want to do is work to advance the interest of the athletes. How do you work together with the same people that are in that leadership position because those are the people that as we need to work with in order to advance the interest of the athletes?

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And my next thing is why -- what do you want to do in terms of showing the athletes that you support them and also working with the federation itself to make sure that you advance their interests?

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A In a very, you know, in the right ways. Not by sending E-mails to people and calling people names and by doing it the right way, by talking to the right people and getting a consensus with people as to what can be done because the athletes have the most powerful vote in all of USATF. And I have a lot of friends that are in that building when we have conventions and whatnot, and working together with them and communicating with them what needs to be happening and what can be done. And I have a lot of institutional knowledge and I can put most of the USATF reticulations and whatnot very well and understand what we can do and what we can't do. Often people will call me. Last year during the convention, which was online, more than 40 people called me and asked me how things worked because I am someone that has a lot of knowledge of the institution and how the institution works.

101. In the Arbitrator's view, drawing the conclusion from this testimony that Mitchell could not represent athletes or promote positive change on behalf of athletes is not reasonable.
102. Concerning Mitchell's disagreement with USATF leadership and the direction of USATF, the Reinstatement Panel found that such disagreement would "result in the undermining and the thwarting and the forward mobility and progress of USATF." It is true that Mitchell is critical of USATF leadership and in many instances disagrees with the direction USATF has taken and is taking. However, dissenting views do not inherently undermine an organization. Rather, dissent can often bring about examination, reflection, and positive change. There is no rational basis nor is it reasonable that only USATF members who agree with USATF leadership and with the direction of USATF should be eligible to serve as a USATF staff member or serve on a USATF committee. Further, Mitchell is not the only USATF member who has expressed negative views about USATF leadership and who has questioned the direction of USATF. Those individuals are eligible to participate as a team staff member or serve on a USATF committee despite their views.
103. Much also has been made by USATF of the four emails that Mitchell sent out on November 15, 2019, December 1, 2019, February 5, 2020, and May 22, 2020. In many respects they were unnecessary, unwarranted, and inappropriate. They contained statements that were strident and, in some cases, ugly. Those emails do not bode well for Mitchell. Two things, however. First, Mitchell addressed these emails in his reinstatement hearing. In direct examination Mitchell testified as follows:

Q Do you regret sending some of the texts that you sent in the months following the suspension that was imposed upon you in response to the grievance that you filed?

A Well, I did and I regret doing those things, but at the same time I was frustrated because I don't feel like there was any justice.

Q Okay. If you had to do it all over again do you think you would have used a different tone or gone about it differently as far as your response to the suspension that was imposed on you after you filed a grievance?

A Yes, I would.

Q If you were permitted to serve as a USATF national team coach or on USATF committees going forward, assuming of course that you are selected for any of those, can you promise to this committee that you would be respectful to all those that you interact with in that committee work or team coach position?

A Absolutely.

Q And can you commit that if you were actually selected to a national committee or as a national team coach in the future that you would make sure that any E-mails or communications that you had with people in relation to that work, anything you sent was respectful in tone and the content of your communication?

A Absolutely. For sure, yes.

104. Second, the last of these emails was sent on May 22, 2020. The reinstatement hearing occurred on October 25, 2022. There is no evidence on the record that Mitchell has sent disparaging or derogatory emails to anyone associated with USATF since May 22, 2020. That is a period of approximately two- and one-half years, between the May 2020 email and Mitchell's reinstatement hearing. The Reinstatement Panel did not take into account that Mitchell has refrained from sending such emails during that two- and one-half year period.
105. Further, it does not appear, except for the emails mentioned above, that the Reinstatement Panel made much, if any inquiry, regarding Mitchell's actions and behavior since his suspension. This would appear to be a proper inquiry in a reinstatement hearing, but it was not in Mitchell's case. There is nothing on the record that shows there was a pattern of behavior by Mitchell during the last two- and one-half years that would cause him not to be reinstated.
106. Also, it is noted that the Grievance Panel suspended Mitchell's membership in USATF from July 26, 2019, through December 31, 2020. Since January 2020, when Mitchell was reinstated as a member, there is nothing on the record showing that Mitchell breached his membership obligations or did anything that would cause his membership to be suspended or revoked. The Reinstatement Panel seems not to have taken this into account or made any inquiry concerning Mitchell's activities in USATF since he regained his membership.

This would appear to be a proper line of questioning by the Panel in Mitchell's reinstatement request, but it was not undertaken.

107. Considering all of the above, the Arbitrator finds that Mitchell has met his burden of proving that the determination not to reinstate him and deny him the benefits of full membership had no rational basis and was not reasonable.
108. The next question presented to the Arbitrator is whether Mitchell's reinstatement request should be remanded to USATF for further proceedings.<sup>10</sup> And if remanded, should the Arbitrator provide instructions to the Reinstatement Panel, or to a new reinstatement panel if one were convened, as to the criteria that should be considered.
109. Mitchell's position is that the Arbitrator should make a determination, one way or another, whether Mitchell should be reinstated, and that this matter should not be returned to USATF for further consideration. USATF's position is that if the arbitrator finds that the Reinstatement Panel erred in its finding, then the Arbitrator must remand the case back to USATF for rehearing.
110. The Ted Stevens Act and the USOPC Bylaws contemplate that arbitrators can make final and binding decisions that resolve the ultimate issues in the case. Claims filed pursuant to USOPC Bylaw Section 9 are not merely appeals of an NGB determination. A long line of Section 9 cases provides that review is *de novo*. In the context of Section 9 cases, *de novo* review allows the arbitrator to decide all issues in a case and put the matter to rest, and not just send the case back for further consideration by the NGB.
111. Further it is time that this matter is brought to a conclusion. Mitchell filed his reinstatement request on June 13, 2022. Nearly a year and a half has passed since then.
112. Considering the above, the Arbitrator determines that this matter shall not be remanded, but that Mitchell's eligibility to serve as a team staff member and be selected to a USATF committee shall be reinstated as of the date of this Award. To be clear, the Arbitrator is not ordering USATF to select Mitchell as a USATF team staff member or to appoint him as a member to a USATF committee. Mitchell is only eligible or has the opportunity to be considered for those positions. Whether or not he is selected or appointed is dependent on the criteria for selection or the qualifications for appointment and on an evaluation of those criteria or qualifications as they relate to Mitchell and other candidates seeking selection or appointment.

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<sup>10</sup> At the time of the hearing, when asked by the Arbitrator, USATF did not know whether Mitchell's reinstatement case would go back to the original Reinstatement Panel that heard his reinstatement request or to a new reinstatement panel.

## VI. FINDINGS AND DECISION

The Arbitrator therefore rules as follows:

- A. Mitchell has met his burden of proving that the Reinstatement Panel's determination not to reinstate him had no rational basis and was not reasonable.
- B. As of the date of this Award, Mitchell's suspension is lifted and Mitchell is reinstated with the full benefits of USATF membership, including being eligible (having the opportunity) to apply for and be selected or appointed as a USATF team staff member and to a USATF committee.
- C. The Parties shall bear their own attorneys' fees and costs associated with this Arbitration.
- D. The administrative fees of the AAA and the compensation and expenses of the Arbitrator shall be borne by the Parties as incurred.
- E. This Award is in full settlement of all claims submitted in this Arbitration. All claims and defenses not expressly granted herein are hereby denied.

Dated: October 27, 2023

  
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Gary L. Johansen, Arbitrator