

**American Arbitration Association
Commercial Arbitration Tribunal**

In the Matter of the Arbitration between

TEDDY MITCHELL,

Claimant

and

USA TRACK & FIELD,

Respondent

AAA Case Number: 01-23-0002-1602

DECISION ON MOTION TO DISMISS

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**").

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the 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 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 are collectively referred to as "Parties" and individually referred to as a "Party."

4. Mitchell is represented in this proceeding by Howard L. Jacobs, Esq. and Katy Freeman, Esq. of the Law Offices of Howard L. Jacobs.
5. USATF is represented in this proceeding by Steven B. Smith, Esq. and Suzanne Crespo, Esq. of the law firm of Bryan Cave Leighton Paisner.

II. PROCEDURAL BACKGROUND

6. 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.
7. The claims against USATF are set forth in Mitchell’s Statement of the Dispute, which is attached to Mitchell’s Section 9 Complaint.
8. USATF filed an Answer with Affirmative Defenses on June 7, 2023.
9. 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.
10. 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,¹ 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.

11. On June 11, 2023, the Arbitrator requested a response from Mitchell concerning USATF’s Application for Motion to Dismiss. The request stated in part:

Can you please provide your response, if any, to USATF's request to file a Motion to Dismiss by the end of Wednesday, June 14, 2023. Please note that I am only requesting your response to USATF's request, not a response to the merits of a Motion to Dismiss, if one were to be filed. If you need additional time to respond, please let me know along with the additional time you may need.

12. Mitchell provided no response.

¹ The language of Section 9.9 of the USOPC Bylaws is also set out in Section 2.H. of the USOPC Dispute Policy.

13. After considering USATF's request, the Arbitrator on June 15, 2023, granted USATF's Application to file a Motion to Dismiss stating:

After considering USATF's Application to file a Motion to Dismiss and having received no response from Mitchell to the Application, I am granting USATF's Application. USATF may file a Motion to Dismiss on the limited issue (as stated in its Application) that the [Complaint and] Demand [were] untimely.

Additionally, the Arbitrator commented in Preliminary Hearing and Scheduling Order Number 1 issued on July 11, 2023, that if the time bar issue was not decided prior to a hearing on the merits, it would be raised during the merits hearing. Thus, the issue was better resolved prior to, rather than at, the hearing. Also, the Arbitrator noted that a decision on the time bar issue would be of benefit to the Parties as it would provide for a more effective management of the case.

14. The Parties agreed to a briefing schedule on the Motion to Dismiss, which was set forth in Preliminary Hearing and Scheduling Order Number 1. Pursuant to the Order, USATF filed its brief in support of the Motion on July 25, 2023, Mitchell filed his opposition to the Motion on August 4, 2023, and USATF filed a reply brief on August 11, 2023. USATF requested oral argument on August 9, 2023. Oral argument, by agreement of the Parties, was scheduled and held on August 31, 2023.

III. MOTION TO DISMISS

15. In consideration of the Motion to Dismiss, the Arbitrator reviewed the Section 9 Complaint and Demand, the Answer, all the papers filed in support of and in opposition to the Motion to Dismiss and all exhibits. The Arbitrator also considered the oral argument presented by the Parties.

A. Background

16. For an understanding of the issue relative to the Motion to Dismiss, it is helpful to provide the following background information.

- a. 2019 USATF NABR Grievance Decision

17. 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 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.

18. A USATF National Athletics Board of Review ("NABR") grievance panel held a hearing on July 16, 2019, on Mitchell's grievance, and on July 26, 2019, issued its decision ("**Grievance Decision**"). The grievance panel denied "all relief sought by" Mitchell for the following reasons:

Panel rules in favor of Respondents because (1) there has been no proof to support allegations of breach confidentiality, nor (2) no proof to support Respondents retaliation against Complainant, (3) no proof that either of these issues contributed to Complainant's non-selection Men's Big 3 Staff Selection. Panel finds that there was no proof (testimony, documentation) to support any of the allegations reported by the Complainant in this grievance.

Grievance Decision, pp. 1-2.

19. Additionally, the USATF NABR grievance panel *sua sponte*² 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 grievance 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 Decision, p. 2.

² The USATF never filed a grievance (disciplinary measure) against Mitchell relating to his conduct. Rather, the USATF NABR grievance panel, as part of the June 18, 2019, grievance filed by Mitchell, issued disciplinary measures against Mitchell.

b. 2019 USATF NABR Appeal Decision

20. On August 23, 2019, Mitchell filed an appeal of the Grievance Decision with the USATF pursuant to Regulation 21 of the 2019 USATF Governance Handbook.
21. A hearing on Mitchell's appeal was held on October 30, 2019, before a USATF NABR appeal panel and on November 10, 2019, the panel issued its decision ("**Appeal 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 Decision, p. 6.

c. 2022 USATF NABR Reinstatement Decision

22. On June 13, 2022, Mitchell filed a Request for Reinstatement with USATF pursuant to Regulation 22 of the USATF 2022 Governance Handbook ("**USATF Regulation 22**").³ 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.
23. A hearing on Mitchell's request for reinstatement was held on November 1, 2022, by a USATF NABR reinstatement panel, and on November 14, 2022, the panel issued its decision ("**Reinstatement Decision**"). The panel recommended⁴ that Mitchell "not be reinstated at this time," finding, among other things that:

Mitchell's involvement in USATF activities will result in the undermining and thwarting of the forward mobility and progress the organization [USATF] strives to accomplish.

Reinstatement Decision, p. 3.

B. Analysis

a. Issue Presented

24. USATF's Motion to Dismiss is based on the ground that Mitchell's Section 9 Complaint and Demand are time barred. USATF's position is that since the date of denial of Mitchell's opportunity to participate was either the date of the Grievance Decision of July 26, 2019, or in the alternative the Appeal Decision of November 14, 2022, and the

³ Although Mitchell represented himself in both the grievance proceeding and appeal proceeding, he was represented by counsel in the reinstatement proceeding.

⁴ 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." However, the Parties have agreed that the Reinstatement Decision shall be considered a final decision of the USATF for purposes of this Section 9 Complaint and Demand.

Complaint and Demand were filed considerably after those dates, on May 11, 2023, the filing exceeded the 180-day time limit allowed under Section 9.9 of the USOPC Bylaws.

25. Mitchell opposes the Motion to Dismiss. Mitchell's position is that the date of his denial was the date of the Reinstatement Decision of November 14, 2022, and thus his filing of his Section 9 Complaint and Demand were within the 180-day time limit allowed under Section 9.9 of the USOPC Bylaws.
26. The issue the Parties have put before the Arbitrator, relative to the Motion to Dismiss, is when was the date of denial. The Parties put forward three possible dates:
 1. July 26, 2019, when the USATF NABR grievance panel permanently prohibited Mitchell from USATF activities and events such as team staff and committee involvement (the date of the Grievance Decision).
 2. November 10, 2019, when the USATF NABR appeal panel denied Mitchell's appeal of the Grievance Decision (the date of the Appeal Decision).
 3. November 14, 2022, when a USATF NABR reinstatement panel hearing Mitchell's request for reinstatement pursuant to USATF Regulation 22 recommended that Mitchell not be "reinstated at this time" to participate in USATF activities and events, such as team staff and committee involvement (the date of the Reinstatement Decision).

b. USATF's Position

27. USATF takes the position that the date of denial was July 26, 2019, the date of the Grievance Decision and therefore Mitchell's Section 9 Complaint and Demand were filed beyond the 180-day limit.
28. In the alternative, USATF states that even if the date of the November 10, 2019, Appeal Decision is used as the date of denial, Mitchell's Section 9 Complaint and Demand were filed beyond the 180-day limit.
29. In defending both the Grievance Decision and Appeal Decision dates, USATF asserts that the Reinstatement Decision was not a separate "denial" under Section 9 of the USOPC Bylaws, because it simply "maintained" the sanction imposed in the Grievance Decision and affirmed in the Appeal Decision.
30. USATF goes on to explain that as the Reinstatement Decision did not increase or add to Mitchell's sanction (Mitchell's status did not change), the Reinstatement Decision is not a new "denial" of Mitchell's opportunity to participate in USATF activities and events. USATF thus concludes that the Reinstatement Decision cannot be considered separate from the Grievance and Appeal Decisions and therefore the Reinstatement Decision cannot be challenged under Section 9 of the USOPC Bylaws.

31. USATF points out that:

[the] mere fact that USATF has gone out of its way to include reinstatement proceedings in its regulations does not mean reinstatement decisions suddenly become stand-alone “denials” under Section 9, independent of the original denial.

32. USATF goes on to argue that if the Reinstatement Decision is considered a denial under Section 9, Mitchell “would be able to seek reinstatement [under USATF Regulation 22] every year⁵ and file a new Section 9 within 180 days thereafter, *ad infinitum*.” USATF concludes that this is an “absurd result.”
33. USATF further asserts that “a denial of the opportunity to participate necessarily occurs before a member could seek reinstatement” and “it is that denial that begins the 180-day statute of limitations” not a request to be reinstated.
34. In support of its position USATF also cites *Vinogradova v. US Biathlon Association*, AAA Case No. 77-190-00511-09 JENF (Feb. 16, 2010), which found that Vinogradova’s Section 9 Complaint was time barred pursuant to Section 9.10 of the USOC Bylaws, which provided, “A claim against a respondent shall be prohibited unless filed with the AAA not later than six (6) months after the alleged date of denial.”⁶ In support of its position USATF refers to the arbitrator’s comment that “[t]o find otherwise would invite claimants to file multiple, duplicate or nearly duplicate, claims arising out of the same subject matter, a result clearly not intended by the time bar provided by USOC Bylaws Section 9.10.” *Vinogradova*, ¶ 6.2.

c. Mitchell’s Position

35. Mitchell takes the position that the date of denial was November 14, 2022, the date of the Reinstatement Decision and therefore the Section 9 Complaint and Demand were filed within the 180-day limit.
36. Mitchell argues that precluding him “from participating as a USATF Staff team member or to have USATF [c]ommittee involvement indefinitely” violates the Ted Stevens Act and the USOPC Bylaws. Mitchell asserts that if USATF’s position relating to the application of Section 9.9 to his indefinite suspension were adopted, the participation safeguards provided to him and other athletes and coaches by the Ted Stevens Act and USOPC Bylaws would be invalidated.

⁵ Regulation 22.B. of the 2023 USATF Handbook provides that “If a reinstatement request is denied, a subsequent request may only be made one (1) year or more after the decision.”

⁶ Section 9.10 of the USOPC Bylaws was amended and renumbered on April 1, 2023. The *Vinogradova* decision refers to the time bar provision of the USOPC Bylaws that were in effect prior to amendment. Also, the United States Olympic Committee (“USOC”) changed its name to United States Olympic & Paralympic Committee (“USOPC”) on June 20, 2019, thus the decision references the USOC.

37. Mitchell asserts, Relating to USATF Regulation 22, that:

USATF has chosen to include a mechanism under which members can apply for reinstatement after the imposition of sanctions on participation. The mechanism laid out for such a determination provides for the convening of a new NABR Panel and the issuance of a new determination with respect to the [*sic*] whether or not any sanctions should remain in place. USATF should not be allowed to insulate any such decisions with respect to reinstatement from further review or challenge by claiming that the reinstatement determination is some kind of extension of the original determination imposing sanctions.

38. Mitchell reiterates that he “availed himself of the right that USATF itself provided” under USATF Regulation 22 for him to seek reinstatement, but now USATF “implicitly argues that its decisions regarding reinstatement cannot be challenged.”

39. Mitchell states that he is not seeking to “relitigate” the Grievance Decision or procedurally challenge the proceeding under which he was indefinitely barred from participating in USATF activities and events. Nor is he challenging the Appeal Decision. He is not seeking to nullify either the Grievance Decision or reverse the Appeal Decision. Mitchell asserts that his Section 9 Complaint and Demand concern the Reinstatement Decision, which is a separate proceeding that has prohibited him from future involvement with USATF.

40. Mitchell further alleges that:

most if not all of the arguments in the Section 9 Complaint and Demand involve findings based on events that occurred after July 26, 2019; and it cannot reasonably be argued that these November 14, 2022 findings based on this subsequent conduct are time barred.

41. Mitchell also alleges that because the USATF NABR reinstatement panel made findings in its Reinstatement Decision as to his “current” fitness for participation as a USATF coach and committee member, and because those findings differed from those supporting the original Grievance Decision, the Reinstatement Decision must be treated as a new denial for purposes of the Section 9.9 time bar.

42. Finally, Mitchell states that USATF’s reliance on *Vinogradova* is misplaced. Mitchell points out that Vinogradova’s, November 23, 2009, claim “was substantially similar, if not identical” to her October 27, 2008, claim, as both complaints dealt with Vinogradova’s efforts to compete in U.S. qualifying events for international competitions when Vinogradova had not gotten a waiver of the International Biathlon Union’s (IBU) rules, which provided that an athlete who has changed their citizenship or assumed a new citizenship may not participate in IBU competitions representing their new country until at least two years have passed since the athlete last represented their former country.

Mitchell asserts that his Section 9 Complaint is “not substantially” similar to his appeal of the Grievance Decision and “is properly focused on the findings” of the USATF NABR reinstatement panel as set out in the Reinstatement Decision.

d. Discussion and Finding

43. Mitchell filed his Section 9 Complaint and Demand for arbitration under Section 9 of the USOPC Bylaws. Section 9 provides in relevant part:

Section 9.1 Opportunity to Participate. 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 Any reference to athlete in this Section 9 will also equally apply to any coach, trainer, manager, administrator or other official.

Section 9.2 Denial of Opportunity to Participate. Any athlete who alleges that they have been denied, or threatened denial, by a [USOPC] 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.

44. USATF filed its Motion to Dismiss pursuant to Section 9.9 of the USOPC Bylaws, which state:

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.

45. As stated earlier, the issue the Parties have put before the Arbitrator, relative to the Motion to Dismiss, is when was the date of denial.
46. It is the Arbitrator’s determination that the date of denial was the date of the Reinstatement Decision, or November 14, 2022, and therefore the Section 9 Complaint and Demand were filed within the 180-day time limit.

47. The Arbitrator finds that the Reinstatement Decision was a separate and distinct denial of Mitchell's opportunity to participate in upcoming USATF activities and events, including serving as a USATF team staff member or on a USATF committee. Serving as a USATF staff member includes participating as a team coach in a protected competition.
48. The Arbitrator is unconvinced, as USATF asserts, that the Reinstatement Decision was not a separate "denial" under Section 9 of the USOPC Bylaws, because it simply "maintained" the sanction imposed in the Grievance Decision and affirmed in the Appeal Decision. Nor is the Arbitrator convinced that Mitchell's reinstatement request was merely an effort to "commute" his original sanction, and therefore cannot be considered a new denial of Mitchell's opportunity to participate.
49. USATF Regulation 22 states:

A person . . . suspended, expelled or declared ineligible to participate may, at any time, make a reinstatement request, provide 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.
50. The reinstatement hearing was a stand-alone proceeding, filed under USATF Regulation 22, administered by USATF and with a decision rendered by the USATF NABR reinstatement panel. The reinstatement proceeding was not a rehearing of the issues relative to the Grievance Decision. The issues before the reinstatement panel and the findings of the reinstatement panel were different than those of the USATF NABR grievance panel. Likewise, they were different than those of the USATF NABR appeal panel.
51. Mitchell is not attempting to relitigate the Grievance Decision or procedurally challenge the grievance proceeding. He is not seeking to nullify either the Grievance Decision or reverse the Appeal Decision. Mitchell's Section 9 Complaint and Demand concerns the USATF NABR reinstatement panel's findings and its denial of his right to participate as set out in the Reinstatement Decision.
52. The USATF NABR reinstatement panel considered whether Mitchell's conduct and actions, subsequent to the Grievance Decision, would make him eligible to participate in certain USATF activities and events. The reinstatement panel considered Mitchell's current fitness for participation in USATF activities and events. The USATF NABR grievance panel considered Mitchell's conduct and actions prior to and during the grievance hearing, and made a finding relative to Mitchell based on his conduct and actions during that time.
53. The reinstatement proceeding did not merely continue Mitchell's ineligibility, it concerned itself with Mitchell's future participation in USATF activities and events. If Mitchell's request for reinstatement had been granted, he would have been eligible to

participate as a USATF committee member going forward and eligible to serve as a USATF team staff member, including serving as a team coach, in upcoming protected competitions. Instead, Mitchell's request was denied and Mitchell's opportunity to participate in those activities and events was denied.

54. Further, the Arbitrator does not find that *Vinogradova* is determinative of the issue in this case. In *Vinogradova* there was no dispute as to the date of denial. It was the date of the US Biathlon hearing panel's decision denying Vinogradova's attempt to participate in qualifying events that would lead to the U.S. team selection for the Vancouver 2010 Winter Olympic Games. The issue that Vinogradova raised in her Section 9 Complaint was the same issue that she had raised in her earlier US Badminton complaint, which was, could Vinogradova compete for the U.S. in international competitions when she had not obtained a waiver of the International Biathlon Union's (IBF) rules, which prohibited athletes from competing for their new country of citizenship unless either (i) they had gotten a waiver of the IBF rules or (ii) two years had passed since they last represented their former country. The arbitrator did not deal with whether there were two separate proceedings, with similar or dissimilar issues or whether there were two separate denials, because that was not an issue in *Vinogradova*.
55. In conclusion, the Arbitrator finds that the reinstatement hearing was a new action, with a resulting new denial, taken by USATF. The date of denial was the date of the Reinstatement Decision, or November 14, 2022. Since Mitchell's Section 9 Complaint and Demand, were filed on May 11, 2023, they were filed within the 180-day time limit. Accordingly, Mitchell's Section 9 Complaint and Demand are not time barred. USATF's Motion to Dismiss is denied.

IV. ORDER

56. USATF's Motion to Dismiss is denied.

Dated: September 4, 2023



Gary L. Johansen, Arbitrator