

**NEW SOUTH WALES
HARNESS RACING
APPEAL PANEL**

APPEAL PANEL MEMBERS

Hon W Haylen KC

Mr P Kite SC

Dr C Suann BVSc MANZVS MAICD

27 FEBRUARY 2024

APPELLANT CHRIS FRISBY

RESPONDENT HRNSW

**AUSTRALIAN HARNESS RACING RULES
190(1)**

DECISION

The Appeal Panel finds that the Appeal be upheld to the extent that a disqualification of 6 months is to apply to Mr Frisby commencing from the same date as the original decision of the Stewards. Mr Frisby is granted a refund of 50% of the Appeal fee.

1. On 28 November 2021 Uncle Craigo, trained by Mr Chris Frisby, won race 1 at Young. An analysis of a post-race urine sample detected the presence of levamisole. On 23 October 2023 Stewards opened an inquiry into the circumstances that resulted in the horse having that substance detected in the sample. After receiving evidence from Mr Frisby, Stewards charged him with a breach of AHRR 190 (1), (2) and (4), namely (1) a horse shall be presented for a race free of prohibited substances; (2) If a horse is presented for a race otherwise than in accordance with sub-rule (1) the trainer of the horse is guilty of an offence; (4) An offence under sub rule (2)...is committed regardless of the circumstances in which the prohibited substance came to be in the horse. The Regulatory Veterinarian for HRNSW, Dr Martin Wainscott, gave evidence at the Stewards inquiry that levamisole can affect the immune system of the horse and that the Racing Appeals Tribunal had accepted that levamisole was a class 2 substance under the Harness Racing Penalty Guidelines for Prohibited Substance Offences. Dr Wainscott also gave evidence that levamisole has a low margin of safety in horses and he explained that meant "there is not a big difference between the dose which would be effective and the dose which would be toxic." Mr Frisby pleaded guilty to the charges as particularised by the Stewards .
2. In determining the penalty for this offence, the Stewards gave consideration to subjective factors concerning Mr Frisby. They spoke of his involvement with the Harness Racing Industry for approximately 40 years and available records showing that since the 1983-84 season he had trained 3696 starters with 568 wins and 1439 other placings. His previous sponsorship of the harness racing industry and involvement in mini-trotting was recognised. The Stewards also gave consideration to his registered training establishment, including the fact that he currently trains 8 or 9 horses and was currently assisted by his son.
3. The Stewards then turned their attention to the circumstances that led to levamisole being detected in the horse, Uncle Craigo. There were a number of things that Mr Frisby could have addressed that would have prevented that exposure. It was noted that he was aware that levamisole should not be given to horses but he did not take steps to prevent exposure of this horse to that substance. Dr Wainscott had considered a number of possibilities that might have led to levamisole being in the horse's system but set aside a number of them in favour of the likelihood that the washing of the drench guns used on the sheep kept by Mr Frisby and the washing of that equipment in the vicinity of saline buckets and equipment used for the horses were potential causes for the positive finding.
4. The Stewards then considered the need to protect the integrity of the industry and the confidence of the wagering public. Disqualification was regarded as the appropriate penalty, a stance adopted by HRNSW for some time. Reference was made to the decision of the Racing Appeals Tribunal (NSW) in the case of Wade, where a starting point of 15 months disqualification was considered as appropriate. The Stewards noted that this was Mr Frisby's fourth prohibited substance offence, apparently relying on the Offence Report system showing such penalties in April 2022, this case in July 2021, another case in July 2019 and a case in 2015.
5. Notwithstanding the previous prohibited substances offences, the Stewards stated that they were prepared to treat this as a first offence as a starting point. A reduction of 25% was allowed due to the early guilty plea and a further reduction was granted for personal and subjective factors and Mr Frisby's harness racing record and industry involvement. Having regard to those matters a final penalty of 8 months disqualification was imposed.

6. Mr Frisby has lodged an appeal to this Panel and challenges the severity of the 8 months disqualification. At the hearing Counsel for HRNSW took the Panel through the evidence and reasoning of the Stewards that resulted in a disqualification of 8 months. On a number of occasions the 4 previous disqualifications for use of prohibited substances by Mr Frisby was emphasised although the Stewards had decided that the circumstances of those matters warranted this matter to be treated as a first offence.
7. Counsel for Mr Frisby presented a wider range of issues that, if accepted, would result in the vacation of the disqualification order, the suspension of any penalty if imposed with such penalty being wholly suspended with the period of operation to expire on the date of decision in recognition of time served. The Panel has decided that there were jurisdictional difficulties for a number of these submissions and that the Appeal was able to be decided on the evidence before the Stewards and the additional material received by the Panel.
8. In determining this Appeal, the Panel has commenced with a review of Mr Frisby's responses when Stewards conducted a stable inspection on 1 March 2021 following the finding of levamisole in the horse Uncle Craigo. Mr Frisby was clearly shocked that the prohibited substance had been found in the horse and on several occasions stated that he could not understand how that occurred. He said that he did not know where the levamisole came from and asked "what would I have levamisole in?". When asked if he had sheep or cattle and if he had drench for them he stated that he did have sheep and had "a big fucking 20 litre drum" of drench. He had sheep in paddocks everywhere but would not drench the horses because years ago there was a bloke using it and Mr Frisby was lucky enough to be told by a Steward to get rid of it and that he was not allowed to use it but he had been telling people to use it. He said he was told by a vet that he could use the drench. Later Mr Frisby said that his sheep had been wormed and that was the only way the horse could get it. When asked if there was any way the horse could be near where he drenched his sheep, he said only around the sheep yard and that he would let horses out around them. After the stable inspection Mr Frisby sent a short video to the Stewards showing 6 drenching products of which 5 contained levamisole that he was using on his sheep. The 5 containing levamisole ranged in size from 5 litre, 8 litre, 10 litre through to a 20 litre container.
9. In the Inquiry before the Stewards in October 2023 Mr Frisby was asked why he stated he had nothing to be worried about in using levamisole even when he had been told not to use it. He replied that he did not think it was a worry because it was only a wormer, so why would he worry? He then said: 'I didn't see any of it as an issue, no. It wouldn't matter if it was a full thing, I still don't see it an issue because it's only a wormer, it's not Bute or it's not something to be worried about- enhancer or a painkiller or anything, it's only a wormer which does not do anything to the horse.' He was then asked that if there was a chance that the drench containing levamisole could come into contact with the horses or the gear that he used for the horses, was that not a concern for him?, Mr Frisby responded: "Ah, no-well..it is now that you've just given me a positive swab... but it's never been proved...why would you worry about it touching anything?" He did not know that it could lead to contamination," but it's not something that anybody really worries about because there's no benefit of it...its not enhancing the horse, its not doing anything for it".

10. It is clear from the above pieces of his evidence that Mr Frisby knew for a long time that levamisole was a prohibited substance but he chose to believe it could have no effect on the horse. He did not read any of the warnings about levamisole that were distributed by Harness Racing because his reading powers were poor, yet he made no attempts to engage people to help him understand his obligations under the Rules of Harness Racing. Against that background the Panel regards this charge as a serious breach that warrants a period of disqualification.
11. It should be noted that the nature of this case was somewhat altered when, for the first time, Mr Frisby's wife provided evidence that in November 2021, she had washed the gear used for drenching the sheep but had done so outside of the shed where Mr Frisby washed them in hot water and stored them under the sink in that shed. Mrs Frisby took 2 drench guns to the tap at the water tank and washed them in cold water. The tank water ran from the tap onto the grass as there was no drain. She said that the racehorses did not have access to the area around the water tank or the grass in that area. Prior to this evidence the best theory of how the horse came to have levamisole in its system was Mr Frisby washing the drench guns in the shed and the gun dripping onto the saline drenching equipment used for the horses. At the Appeal it was accepted that the likely source of contamination was the result of co-mingling of the sheep and horses in the paddocks.
12. In determining an appropriate penalty in this case, the Panel accepts the mitigating matters found by the Stewards, namely Mr Frisby's subjectives, his involvement in the industry over 40 years, his previous sponsorships of the Harness Racing industry and involvement in mini-trotting. Appropriately the Stewards gave him a 25% reduction in penalty for his early guilty plea and 13 weeks reduction for his personal and financial subjective factors and his harness racing record. However, there are two matters where the Panel believes that another path should be taken. The Stewards commenced with a disqualification for 15 months, adopting an approach of the Racing Appeals Tribunal in the case of Wade. The Stewards also gave prominence to this being his 4th prohibited substance case. The first case was in 2015 but Mr Frisby had followed the advice of a veterinarian. The second case in 2019 came about as the result of the horse eating certain plants. The third case appears to be this case and the fourth cannot be included as it deals with a presentation in 2022, after the 2021 event being dealt with in this case. Having regard to those matters the Panel regards an appropriate overall penalty of 6 months disqualification is appropriate in this case. Mr Frisby has served approximately 4 months of the total.
13. Having regard to the matters discussed above, the Appeal Panel finds that the Appeal be upheld to the extent that a disqualification of 6 months is to apply to Mr Frisby commencing from the same date as the original decision of the Stewards. Mr Frisby is granted a refund of 50% of the Appeal fee.

Hon Wayne Haylen KC – Principal Member

Mr P Kite SC - Appeal Panel Member

Dr C Suann BVSc MANZVS MAICD – Appeal Panel Member

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