

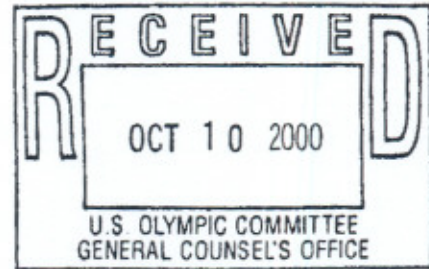
AMERICAN ARBITRATION ASSOCIATION

FILE COPY

In the Matter of the Arbitration between

Re: 30 190 60200

Karin Korb
-and-
Sharon Clark
and
United States Tennis Association
and
Wheelchair Sports, USA



ADMINISTRATOR: Ernestine M. Dunning

FINDINGS, CONCLUSIONS AND AWARD

A. INTRODUCTION

This arbitration presents a challenge by, Karin Korb ("Korb"), the person currently named as first alternate to the Paralympics Women's Wheelchair Tennis Team for the 2000 Sydney Games (the "Games"), to Sharon Clark ("Clark"), one of the women presently named to that team by the United States Olympic Committee ("USOC").

Korb's challenge to Clark's position on the team is based on two contentions: First, that proper administration of the selection process that was established by Wheelchair Sports, USA and USTA ("USTA/WSUSA") and approved by the USOC would have appointed Korb to the Wheelchair Tennis Team; and second, that Clark has violated provisions of the Code of Conduct, 2000 Paralympic Games, United States Olympic Committee by not maintaining a proper level of fitness and competitive readiness or by being medically unfit to compete in the Games.

This proceeding was initiated by the filing of a Complaint by Korb with the USOC pursuant to the Grievance Procedures for Code of Conduct and Team Selection 2000 Paralympic Games, United States Olympic Committee (the "Grievance Procedures"). Pursuant to the Grievance Procedures, the Complaint was referred by the USOC for arbitration by the American Arbitration Association ("AAA"). Each of the parties has agreed in writing to submission of this matter to arbitration by the undersigned arbitrator as the AAA arbitrator.

A preliminary conference was conducted in this matter on Saturday, October 7, 2000 at noon Mountain Daylight Time. At that conference procedures were established for exchange of witness lists and exhibits, and a telephonic hearing was set for Monday, October 9, 2000, at 10:00 a.m. Mountain Daylight Time.

At the hearing, sworn testimony was taken from witnesses indicated on Exhibit A hereto and exhibits were received as indicated on Exhibit B hereto.

The question of Korb's standing to raise issues of Clark's fitness to compete was raised by Clark. Apart from the factual state of Clark's fitness, the parties stipulated that there were no factual disputes on which evidence was to be offered regarding the question of Korb's standing to raise the issue of Clark's fitness. The arbitrator, after hearing argument from all parties who wished to offer arguments on the issue of Korb's standing to challenge Clark's fitness, ruled that Korb was without standing to raise Clark's fitness under the Grievance Procedures, and accordingly, the arbitrator declined to hear evidence from Korb on Clark's fitness.

B. FINDINGS AND CONCLUSIONS

1. Pursuant to the "Guidelines for Athletic Selection Procedures" found in the DSO/NGB Procedures Manual, published by the USOC Games Preparation and Services Committee for the 2000 Paralympic Games, Sydney, Australia, in late May, 1999, WSUSA and USTA submitted to USOC selection procedures for the Wheelchair Tennis Team for the Games (the "Athlete Selection Procedures").

2. On or about December 14, 1999, the USOC approved the Athlete Selection Procedures.

3. In its January/February, 2000 newsletter, USTA/WSUSA published what it considered a clarification of the Athlete Selection Procedures, namely that candidates must compete in one of four specified tournaments in 2000.

4. In late June, 2000, USTA/WSUSA made two nominations to the USOC for the Women's Wheelchair Tennis Team for the Games. Korb was among the nominations; Clark was not. Korb was notified of this nomination on or about June 30, 2000 and was advised that her nomination was subject to USOC approval.

5. In early July, 2000, Clark contacted the USOC protesting that she had been excluded from the USTA/WSUSA nomination for failure to compete in any of the tournaments identified in the USTA/WSUSA January/February Newsletter, a requirement that was not part of the Athlete Selection Procedures.

6. On July 10, 2000, the USOC Games Preparation and Services Committee advised USTA/WSUSA that its nomination of members to the Wheelchair Tennis Team was not in compliance with the Athletic Selection Procedures that had been approved by USOC and that USTA/WSUSA must reconvene to select team members under the approved Athlete Selection Procedures.

7. About this time, USTA/WSUSA requested USOC's approval of an addition to the Athletic Selection Procedures that would require candidates to have competed in one of the tournaments identified in the January/February, 2000 newsletter. This request was denied by USOC on the grounds that published USOC procedures precluded basing selection procedures on events completed prior to the publication of the selection process.

8. On or about July 12, 2000, USTA/WSUSA advised the USOC that the former's committee had reconvened as directed by the USOC and made superceding nominations to the Wheelchair Tennis Team for the Games in accordance with the Athletic Selection Procedures, without reference to the additional qualification of playing in any specific 2000 tournaments. Clark was included among these nominations; Korb was not.

9. Korb was advised of the withdrawal of her nomination by a letter from USTA/WSUSA dated July 12, 2000. Korb testified that she actually learned of the withdrawal of her nomination three days later, on July 15, 2000.

10. Shortly after this time, the USOC approved USTA/WSUSA's revised nominations to the Women's Wheelchair Tennis Team for the Games.

11. In late September and early October, 2000, USOC, USTA and WSUSA inquired into the issue of Clark's fitness by way of medical assessment and have concluded that Clark is fit to participate in the Games.

12. After continuing dialogues with USOC and USTA/WSUSA during August and September, 2000, about the possibility of qualifying for the Games by way of ITF wildcard or in her capacity as first alternate, should Clark be unable to compete for medical reasons, Korb initialed the complaint leading to this arbitration on October 5, 2000.

13. The USTA/WSUSA Athlete Selection Procedures, both before and after the "clarification" concerning specific tournament play was added, are not clear. They are based on USTA "rankings" for and twelve-month period ending June 20, 2000. Yet USTA rankings occur only at year end. They are based on internally conflicting requirements concerning World Team Cup "availability and inclusion."

14. The USOC acted within its proper authority in rejecting the initial USTA/WSUSA nominations on the basis that procedures USTA/WSUSA employed differed from that which USOC had approved when USTA/WSUSA added a requirement of particular tournament play in 2000 - - whether this is characterized as a "modification" or a "clarification."

15. Once USOC prohibited USTA/WSUSA from including the particular 2000 tournament play requirement, USTA/WSUSA's own interpretation of the Athlete Selection Procedures resulted in USTA/WSUSA selecting Clark as its nominee, rather than Korb. This is very persuasive evidence that USTA/WSUSA's "clarification" effected a very material change from that which had been approved by USOC as the rules for selection of the Wheelchair Tennis Teams for the Games.

16. The Athlete Selection Procedures, as originally promulgated, are unclear and ambiguous. They lend themselves to an interpretation that led USTA/WSUSA ultimately to nominate Clark. They may, in fact, lend themselves to an equally plausible interpretation that would have placed Korb in the Games.

17. At this late date, on the eve of the team's departure for the Games, more than two and one-half months after USTA/WSUSA withdrew Korb's nomination and nominated Clark, and many weeks after the USOC accepted Clark's nomination and designated her to the

team roster, it is not appropriate to substitute the arbitrator's judgment in interpreting these ambiguous Athlete Selection Procedures for the judgment of their authors, in interpreting them in favor of Clark.

C. AWARD


1. The relief requested by Korb, that the USOC be directed to withdraw its selection of Clark to the Paralympic Women's Wheelchair Tennis Team and substitute Korb for that position on the team, is denied.

2. All claims by Korb for monetary damages against other parties are denied.

3. The fees of the American Arbitration Association, the arbitrator's fee, and other costs of this arbitration proceeding shall be born in equal parts by USTA, WSUSA, Korb, and Clark. Each party shall bear her or its own other costs and expenses, including attorneys fees.

4. This Award is made in full and final adjudication of all matters raised in this arbitration.

DATED October 10, 2000, at Denver, Colorado.



A. Bruce Campbell, Arbitrator

**EXHIBIT A
TO FINDINGS, CONCLUSIONS AND AWARD**

- A. Witnesses Called by USTA
 (1) Susan M. Edelstein
 (2) Patricia Shepherd

- B. Witnesses called by Karin Korb
 (1) Daniel James
 (2) Karin Korb

- C. Witnesses called by Sharon Clark
 (1) Sharon Clark
 (2) John Ruger

**EXHIBIT B
TO FINDINGS, CONCLUSIONS AND AWARD**

Exhibits Received at October 9, 2000 Hearing

A. USTA Exhibits 1-12 (all received without objection).

USTA 1A-E	2000 USA Paralympic Tennis Team Selection Criteria and related documents
USTA 2A-C	June 26, 2000 Athlete Nominations and June 30, 2000 notification letter to Korb
USTA 3A-H	July 6, 2000 letter from Susan Edelstein to Gary Moy and attachments
USTA 4A-B	July 7, 2000 Complaint letter from Christopher L. Campbell to Norman P. Blake
USTA 5A-R	July 10, 2000 Demand for Arbitration filed by Sharon Clark and attachments
USTA 6A-B	July 10, 2000 letter from Julie Y. Chen to Norman P. Blake
USTA 7	July 10, 2000 letter from Dr. Joe Kearney to Susan Edelstein
USTA 8A-B	July 12, 2000 letter from Susan M. Edelstein to Patricia Shepherd and Carol Williams re new nominations to 2000 Paralympic Tennis Team
USTA 9	July 12, 2000 letter from Susan M. Edelstein to Karin Korb
USTA 10	Fax note from Bill Fairbanks to Susan Edelstein
USTA 11A-B	August 1, 2000 letter from Susan Edelstein to Karin Korb
USTA 12	September 29, 2000 letter from Dr. Greg Gutierrez, Patricia Shepherd and Susan M. Edelstein to Sharon Clark

B. Clark Exhibits*

Clark E	DSO/NGB Athlete Selection Procedure Manual
Clark G	Letter 7-11-00 USTA to C.L. Campbell, Esq.

Clark I	2000 USTA Women's Wheelchair Open Standings
Clark J	Player Record
Clark K	May 1999 Two Bounce News
Clark M	Grievance Procedures for Code of Conduct and Team Selection 2000 Paralympic Games
Clark N	Code of Conduct 2000 Paralympic Games United States Olympic Committee

* Clark Exhibits E, G, I, J, K, M, and N received without objection. Clark Exhibit H – 10/5/00 Fax from Greg Hamey to Gregory L. Curtner offered, objected to and not received due to absence of foundation.

C. Korb Exhibits **

Korb 1	Complaint dated 10-5-00
Korb 4	Email of 10-6-00 Dan James to Gregory Curtner
Korb 5	Email of Lyn DeLaney to Curtner
Korb 6	Email of 9-20-00 from Korb
Korb 7	Email of 9-5-00 Clark to Julie
Korb 8	Email of 9-19-00 Susan Edelstein to Korb
Korb 9	Email of 9-21-00 Susan Edelstein to Korb
Korb 10	Email of 9-18-00 Bill Fairbanks to Korb
Korb 11	Email of 10-8-00 Don Drewry to Korb

** Korb Exhibits 1, 4 and 6 were received without objection; Korb Exhibits 5, 7, 8, 9, 10 and 11 were objected to by Clark and received only insofar as they relate to team selection, but we refused as evidence to the extent they relate to Clark's fitness; Korb Exhibit 3 (10-6-00 letter Curtner to Muedeking) was refused on Clark's objection on the basis that this was a settlement proposal.