

**DECISION OF THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
DIVISION I INFRACTIONS APPEALS COMMITTEE**

February 26, 2021

Decision No. 524

Former Assistant Men's Basketball Coach

Georgia Institute of Technology

Atlanta, Georgia

**FORMER ASSISTANT MEN’S BASKETBALL COACH
GEORGIA INSTITUTE OF TECHNOLOGY
APPEAL DECISION SUMMARY**

Outcome

The former assistant men’s basketball coach at the Georgia Institute of Technology appealed to the NCAA Division I Infractions Appeals Committee the following finding of violation and penalty prescribed by the NCAA Division I Committee on Infractions:

Finding of Violation

IV.B.2: The former assistant men’s basketball coach failed to meet standards of ethical conduct and his responsibility to cooperate when he provided false and misleading information on two occasions and attempted to influence the host to also provide false and misleading information.¹

Penalty

V.6: Show-cause order: The former assistant men’s basketball coach shall be subject to a three-year show-cause order to run from September 26, 2019, through September 25, 2022. During that time period, any employing institution shall prohibit the former assistant coach from engaging in any athletically related duties.²

The Infractions Appeals Committee affirmed the finding of violation and the penalty.

Members of the Infractions Appeals Committee

The members of the Infractions Appeals Committee who heard this case were: Jonathan Alger, president at James Madison; W. Anthony Jenkins, acting chair and attorney in private practice; Ellen M. Ferris, vice chair and associate commissioner at the American Athletic Conference; Patricia Ohlendorf, retired vice president for legal affairs at Texas; and Allison Rich, senior associate athletics director and senior woman administrator at Princeton.

¹ For full details of the findings of violations in this case, please go to the Georgia Institute of Technology Committee on Infractions Decision (September 26, 2019) via NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

² For full details of the penalties prescribed in this case, please go to section VII of this Infractions Appeals Committee decision or the Georgia Tech Committee on Infractions Decision via LSDBi by clicking [HERE](#).

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I. INTRODUCTION.

The former assistant men's basketball coach at the Georgia Institute of Technology appealed to the NCAA Division I Infractions Appeals Committee specific findings of violations and penalties prescribed by the NCAA Division I Committee on Infractions. In this decision, the Infractions Appeals Committee addresses the issues raised by the former assistant men's basketball coach (hereinafter referred to as former assistant men's basketball coach or appellant).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 524, September 26, 2019, in which the committee found violations of NCAA legislation in the men's basketball program. Based on those findings, the Committee on Infractions classified the case as a Level I-Aggravated case for the former assistant men's basketball coach and prescribed penalties accordingly.³

This case centered on violations of NCAA bylaws governing recruiting inducements, extra benefits, unethical conduct and failure to cooperate.

After the Committee on Infractions issued its decision, the former assistant men's basketball coach filed a timely Notice of Appeal October 11, 2019. A written appeal was filed November 18, 2019. The Committee on Infractions filed its Response December 17, 2019. The former assistant men's basketball coach filed his Rebuttal to the Committee on Infractions' Response January 3, 2020. This case was considered by the Infractions Appeals Committee October 29, 2020 (see Section X for Appellate Procedure).

III. FINDINGS OF FACT AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for Georgia Tech Page Nos. 3 through 9. A copy of the decision may be accessed via the NCAA Legislative Services Database for the Internet (LSDBi) by clicking [HERE](#).

IV. ANALYSIS AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.

See Committee on Infractions decision for Georgia Tech Page Nos. 9 through 15. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

V. APPEALED VIOLATIONS FOUND BY THE COMMITTEE ON INFRACTIONS.

The former assistant men's basketball coach appealed the following violation found by the Committee on Infractions:

³ The Committee on Infractions classified this case a Level I-Standard for Georgia Tech.

IV.B2 The assistant coach lied in both of his interviews and attempted to persuade the host to change his story.

For the other violations found by the Committee on Infractions, see Committee on Infractions decision for Georgia Tech Page Nos. 9 through 15. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VI. CORRECTIVE ACTION TAKEN AND PENALTIES (PROPOSED OR SELF-IMPOSED) BY THE UNIVERSITY [AND CONFERENCE].

See Committee on Infractions decision for Georgia Tech APPENDIX ONE. A copy of the decision may be accessed via LSDBi by clicking [HERE](#).

VII. APPEALED PENALTIES PRESCRIBED BY THE COMMITTEE ON INFRACTIONS.

The former assistant men’s basketball coach appealed a penalty prescribed by the Committee on Infractions. The appealed penalty reads as follows:

V.6 Show-cause order: The assistant coach admitted orchestrating the events that led to severe Level I violations on a highly touted prospect's official visit. Specifically, the assistant coach admitted that he contacted a well-known former Georgia Tech men's basketball player and booster to get the prospect, his host and him into a local strip club without incident. His direct involvement of the booster in the prospect's official visit was a violation in and of itself but set off a chain of Level I violations. The assistant coach failed to fulfill his obligation to cooperate and did not meet ethical obligations when he originally lied about his involvement in the official visit violations, attempted to persuade the host to change his truthful story and then lied about those attempts. Therefore, the assistant coach will be informed in writing by the NCAA that the panel prescribes a three-year show-cause order pursuant to Bylaw 19.9.5.4. The show-cause period shall run from September 26, 2019, through September 25, 2022. During that time period, any employing institution shall prohibit the assistant coach from engaging in any athletically related duties. If the assistant coach obtains employment or affiliation with another NCAA member institution during the show-cause period, the employing institution shall, within 30 days of hiring him, be required to contact the Office of the Committees on Infractions (OCOI) to make arrangements to show cause why the penalty should not apply or notify the OCOI that it will abide by the show-cause order and fulfill reporting requirements.

For the other penalties prescribed by the Committee on Infractions, see Committee on Infractions decision for Georgia Tech Page Nos. 15 through 25. A copy of the decision may be accessed via the LSDBi by clicking [HERE](#).

VIII. ISSUES RAISED ON APPEAL.

In his written appeal, the former assistant men’s basketball coach asserted that the finding of violation should be set aside because the facts found by the panel do not constitute a violation of the NCAA constitution and bylaws, and that the show-cause penalty should be reduced.

IX. APPELLATE PROCEDURE.

In considering the former assistant men’s basketball coach’s appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcript of the institution’s August 22, 2019, hearing before the Committee on Infractions and the submissions by the former assistant men’s basketball coach and the Committee on Infractions referred to in Section II of this decision.

On May 20, 2020, the former assistant men’s basketball coach requested the Infractions Appeals Committee to provide relief from the stay of penalty V.6, a show-cause order. August 17, 2020, the Infractions Appeals Committee granted, effective as of May 20, 2020, his request for relief from the stay of penalty V.6.

Originally, the in-person oral argument for this appeal was scheduled for May 18, 2020. However, March 24, 2020, all pending oral arguments were postponed due to the circumstances and impact of the COVID-19 pandemic. In September 2020, the Infractions Appeals Committee determined that it would be unable to conduct in-person oral arguments in the foreseeable future and would need to conduct oral arguments virtually. The parties were notified September 25, 2020, that the oral argument for this appeal would be conducted virtually.

A virtual oral argument was conducted October 29, 2020. The assistant men’s basketball coach participated and was represented by his legal counsel. The Committee on Infractions was represented by the appeals coordinator for the Committee on Infractions and the director of the Office of Committees on Infractions. The enforcement staff was represented by the managing director of enforcement and a director of enforcement. Other participants included the director of legal affairs and associate general counsel, the vice president of hearing operations, an associate director and intern for hearing operations. Two institutional representatives for Georgia Tech and three new members of the Infractions

Appeals Committee participated as silent observers. The oral argument was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

X. INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.⁴

Review of the Finding of Violation: Unethical Conduct and Failure to Cooperate in the Second Interview (IV.B2)

As outlined in NCAA [Bylaw 19.10.1.2](#), to overturn a factual finding prescribed by the hearing panel, the appealing party must show:

- a. A factual finding is clearly contrary to the information presented to the panel;
- b. The facts found by the panel do not constitute a violation of the NCAA constitution and bylaws; or
- c. There was a procedural error and but for the error, the panel would not have made the finding or conclusion.

The first issue presented by the appellant is whether the finding of violation IV.B2 was clearly contrary to the evidence presented to the panel. In this case, the appellant did not dispute that he provided false and misleading information in his first interview with the enforcement staff. However, the appellant disputed both attempting to persuade the student host to change his testimony and lying about it in his second interview. In support of his assertion, the appellant maintained that the testimony provided by the student host and the associate athletics director “does not align and thus should not be able to be used in conjunction to establish credibility” in this infractions case. (Written Appeal Page No. 2) Further, the appellant argued that the statements of the student host and the associate athletics director do not prove that their version of the events surrounding the recruiting violations were truthful. (Written Appeal Page No. 2)

In its response to the appellant’s written appeal, the panel maintained that its determinations are based on matters of witness credibility and are within the authority of the panel. (Committee on Infractions Response Page No. 13) The panel further argued that when making its decisions regarding whether factual findings and conclusions of violations exist, the panel bases its decisions, as outlined in [Bylaw 19.7.8.3](#), on:

⁴ In this section of the decision, the cites to other infractions cases and NCAA bylaws will be linked to the full text of the public infractions decisions and bylaws in LSDBi.

“... information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs. The information upon which the panel bases its decision may be information that directly or circumstantially supports the alleged violation.” (Committee on Infractions Response Page No. 13)

The panel maintained that its conclusions are supported by an established timeline and credible statements within the case record. (Committee on Infractions Response Page No. 4) According to the panel, the student host’s testimony, while not perfect, is credible, particularly considering the events are corroborated by the associate athletics director. (Committee on Infractions Response Page No. 11) As such, the panel argued that the factual findings are not clearly contrary to the information presented in this infractions case, and the facts as found support additional unethical conduct violations. (Committee on Infractions Response Page No. 11)

As noted above, the Infractions Appeals Committee’s standard of review related to factual findings and findings of violations are set forth in [Bylaw 19.10.1.2](#). Further, to demonstrate that a finding of violation is clearly contrary to the information presented, the appellant must show more than an alternative reading or application of the information exists. As this committee has stated in the University of Mississippi case:

“A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding, nor will a showing that such information might have outweighed the information on which the committee based a finding. The Infractions Appeals Committee specifies that a finding may be set aside on appeal only upon a showing that it is clearly contrary to the information presented to the Committee on Infractions. A showing that there was some information that might have supported a contrary result will not be sufficient to warrant setting aside a finding, nor will a showing that such information might have outweighed the information upon which the committee based a finding. The Infractions Appeals Committee under existing legislation will set aside a finding only upon a showing that information that might have supported a contrary result clearly outweighed the information upon which the Committee on Infractions based the finding.” [\[University of Mississippi, Infractions Appeals Committee Report \(May 1, 1995\) Page No. 8\]](#)

Additionally, this committee has previously stated it is "deferential to the Committee on Infractions in determining the credibility of the evidence, specifically in relationship to weighing the veracity of individuals before it, and it is hesitant to overturn such determinations absent a clear demonstration to the contrary." [\[University of Southern](#)

[Mississippi, Former Head Men's Basketball Coach, Infractions Appeals Committee Decision \(February 2, 2017\) Page No. 5\]](#)

In this case, the appellant does not meet the high bar for the Infractions Appeals Committee to overturn the factual finding and the conclusion that he failed to cooperate by lying during his second interview with the enforcement staff. While the appellant raised inconsistencies in the testimony of the student host and the associate athletics director, he failed to demonstrate that the information presented in the case record clearly outweighed the information on which the panel based this unethical conduct finding.

Therefore, the Infractions Appeals Committee affirms finding of violation IV.B2.

Review of Penalty: Show-Cause Order (V.6)

The Infractions Appeals Committee may vacate penalties prescribed by a panel only on a showing by the appealing party that the prescription of the penalties is an abuse of discretion.

As we stated in the Alabama State University case:

“...we conclude that an abuse of discretion in the imposition of a penalty occurs if the penalty: (1) was not based on a correct legal standard or was based on a misapprehension of the underlying substantive legal principles; (2) was based on a clearly erroneous factual finding; (3) failed to consider and weigh material factors; (4) was based on a clear error of judgment, such that the imposition was arbitrary, capricious, or irrational; or (5) was based in significant part on one or more irrelevant or improper factors.” [\[Alabama State University, Infractions Appeals Committee Report, \(June 30, 2009\), Page No. 23\]](#)

The appellant sought a reduction in the show-cause penalty prescribed by the panel based on three factors:

1. The case was improperly classified as Level I-Aggravated (Written Appeal Page Nos. 10 and 11);
2. The appellant should have received credit for time already served toward the show-cause penalty (Written Appeal Page No. 11); and
3. Because his case was linked to completely unrelated matters, the show-cause penalty started at an unreasonably late date. (Written Appeal Page No. 12)

Determination or Weighing of Aggravating and Mitigating Factors

The appellant made two arguments regarding why he believed his case was improperly classified by the panel as Level I-Aggravated. First, the appellant challenged the panel’s determination and weighing of the aggravating and mitigating factors. Specifically, the appellant argued that the facts of the case do not support the inclusion of two aggravating factors: obstructing an investigation or attempting to conceal a violation [[Bylaw 19.9.3-\(d\)](#)] and unethical conduct, compromising the integrity of the investigation and failing to cooperate [[Bylaw 19.9.3-\(e\)](#)]. (Written Appeal Page Nos. 10-11) Second, the appellant argued that he should have received credit for the mitigating factor of prompt acknowledgement of the violation and acceptance of responsibility outlined in [Bylaw 19.9.4-\(b\)](#). The appellant maintained that although he provided false and misleading information during the first interview, “that in no way compromised the investigation.” (Written Appeal Page No. 10) Further, the appellant “without further prompting or evidence, fixed his mistake” by requesting a second interview with the enforcement staff. (Written Appeal Page No. 10)

In response to the appellant’s arguments, the panel maintained that the facts and conclusions support their application of all seven aggravating factors, including [Bylaws 19.9.3-\(d\)](#) and [19.9.3-\(e\)](#), as well as the one mitigating factor [Bylaw 19.9.4-\(h\)](#). (Committee on Infractions Response Page No. 19) The panel asserted that during its hearing, the appellant did not challenge any of the aggravating factors or propose any additional mitigating factors, thus signaling his acceptance of the factors employed in the decision. (Committee on Infractions Response Page No. 19)

NCAA legislation gives the panel discretion to determine whether mitigating and aggravating factors, included and not included in [Bylaws 19.9.3](#) and [19.9.4](#), are present and how they are weighed in an infractions case. [[University of Missouri, Columbia Infractions Appeals Decision, \(November 26, 2019\) Page No. 6](#)] In this case, the panel concluded that NCAA violations occurred and the facts and circumstances surrounding those violations supported the application of all seven aggravating factors it used. The panel provided an analysis and rationale for its decision to include the two aggravating factors at issue. In addition, because the appellant did not propose the prompt acknowledgement mitigating factor [[Bylaw 19.9.4-\(b\)](#)] prior to, or at the hearing, the panel had no reason to provide any analysis related to that particular mitigating factor.

Disagreement with the outcome is not enough for this committee to overrule the panel’s determination. [[University of Missouri, Columbia Infractions Appeals Decision, \(November 26, 2019\) Page No. 6](#)] The appellant was unable to demonstrate that the panel’s failure to exclude two aggravating factors and apply one mitigating factor was based on a clear error in judgment such that it was arbitrary, capricious or irrational. Moreover, case

precedent demonstrates that the panel has regularly applied [Bylaws 19.9.3-\(d\)](#) and [19.9.3-\(e\)](#) when individuals violate unethical conduct legislation by denying involvement in NCAA violations.⁵ Therefore, we do not find that the panel improperly weighed or considered aggravating and mitigating factors in this case.

Time Served and Length of the Investigation

The appellant argued that he has intentionally not sought NCAA employment while this process has been ongoing. (Written Appeal Page No. 11) In addition, the appellant argued that his case was linked to completely unrelated matters, which took significantly longer to resolve. Due to this delay, the imposition of the show-cause penalty occurred 21 months after the investigation of his matter was completed. (Written Appeal Page No. 12) As a result, the appellant argued that he should receive credit for the time he has already served the penalty. (Written Appeal Page No. 11)

The panel maintained that the penalty appropriately addresses the conduct of this case and aligns with past cases. The panel also noted that the three-year show-cause order is at the low end of the prescribed range in the penalty guidelines for a Level I-Aggravated violation. (Committee on Infractions Response Page Nos. 22 and 23) Finally, the panel argued that the appellant’s request for a reduction of the show-cause penalty is “based on a concept not contemplated by [Bylaw 19](#) – ‘time served.’” (Committee on Infractions Response Page No. 23) For these reasons, the panel argued it did not abuse its discretion in prescribing the three-year show-cause penalty to begin on the date the decision was issued which is the Committee on Infractions’ standard practice.

The Infractions Appeals Committee concluded that neither NCAA bylaws, nor past infractions cases establish any precedent or legislative guidance that would require consideration of “time served” or the “length of an investigation.” As such, the appellant failed to demonstrate any of the factors required for a showing of an abuse of discretion.

For the above reasons, we do not find that the panel abused its discretion in prescribing a three-year show-cause penalty to begin on the date the decision was issued. Therefore, the Infractions Appeals Committee affirmed penalty V.6.

⁵ See, [\[University of Pacific Infractions Decision \(September 20, 2017\); University of Southern Mississippi Infractions Decision \(April 8, 2016\) and University of Hawaii at Manoa Decision \(December 22, 2015\)\]](#).

XI. CONCLUSION.

Finding of violation IV.B.2, as well as penalty V.6 are affirmed.⁶

NCAA Infractions Appeals Committee
W. Anthony Jenkins, acting chair
Jonathan Alger
Ellen M. Ferris
Patricia Ohlendorf
Allison Rich.

⁶ According to the Infractions Appeals Committee Internal Operating Procedure 4-4, any penalty that is appealed is automatically stayed through the course of the appeal process. This stay is triggered with the filing of the notice of appeal by the appellant and ends with the public release of the committee’s decision. As noted in section IX of this decision, the appellant was granted relief from the stay of the penalty and the three-year show-cause penalty began running May 20, 2020. Due to the of impact of the pandemic, the Committee on Infractions and the NCAA Division I Board of Directors Administrative Committee discussed the application of infractions penalties impacted by the pandemic. The Administrative Committee supported, and the Committee on Infractions adopted, a methodology which the Committee on Infractions will consider when assessing whether infractions penalties have been impacted by the pandemic and the application of the infractions penalties for institutions and involved individuals. Therefore, if not done already, the appellant should contact the chair of the Committee on Infractions through Matt Mikrut (mmikrut@ncaa.org), the director for the Committee on Infractions, at the NCAA national office.