

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

ISMAIL HABIB,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.

CASE NO. 26CV44563

TEMPORARY RESTRAINING ORDER
AND OPINION

Opinion

On August 25, 2026, this court held oral argument on Plaintiff Ismail Habib's Motion for Temporary Restraining Order. Paul Balmer and Dominique Price (pro hac vice pending) appeared with Plaintiff, who was present in person. Kristin Asai appeared on behalf of the defendant, National Collegiate Athletic Association ("NCAA").

Introduction

Plaintiff seeks an *ex parte* temporary restraining order and a preliminary injunction enjoining the NCAA from declaring him ineligible to participate in intercollegiate athletics during the 2026-2027 academic year; from prohibiting him from participating in intercollegiate basketball during the 2026-2027 year; and from taking any action against Plaintiff in retaliation related to his request for injunctive relief.

At issue in this motion is the NCAA's denial of the hardship waiver application relating to Habib's 2024-2025 basketball season with Portland State University. Setting that season aside, Habib has played three full seasons of collegiate basketball: he played the 2022-2023 season with South Plains College; the 2023-2024 season with Portland State University; and the

2025-2026 season with the University of Southern Indiana. The outcome he is seeking by this motion is to grant him an additional year of competition so that he may play basketball in the 2026-2027 season. Habib is currently in the transfer portal, represented by an agent, and several NCAA Division 1 programs have expressed interest in adding Habib to their roster for the upcoming season were he to be declared eligible. Because schools around the country are starting this week and next, Habib stands to lose any scholarship and participation offers relevant to the 2026-2027 academic year and season were the court not to grant him the requested relief.

For the reasons stated below, the court GRANTS the Plaintiff's Motion for Temporary Restraining Order.

Legal Standard

Plaintiffs seeking a temporary restraining order or preliminary injunction under ORCP 79 must demonstrate that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm, (3) the balance of hardships tips in their favor, and (4) the injunction is in the public interest. *Winter v. Nat. Res. Def. Council Inc.* 555 US 7, 20 (2008); *see also Elkhorn Baptist Church v. Brown*, 366 Or 506, 518-19 (2020).

A preliminary injunction can take two forms: a prohibitory injunction that stops a party from taking action to preserve the status quo; or a mandatory injunction that orders a party to take some action. Mandatory injunctions are disfavored and not granted unless the facts and law clearly favor the moving party. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (2015). The distinction between prohibitive or mandatory relief can sometimes be ambiguous, "[t]he distinction between the two types of injunctions can fairly be categorized as one of action versus inaction." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060 (9th Cir. 2014).

Plaintiff characterizes his motion as a prohibitive injunction – asking this court to prevent the NCAA from denying his eligibility for the 2026-2027 season. Defendant characterizes the relief requested as a mandatory injunction because the motion asks this court to require the NCAA to deem Habib eligible to play an additional season. The court finds the distinction ambiguous here. The requested relief would preserve the status quo by not prohibiting Habib from playing in the 2026-2027 season. To pave the way, however, the NCAA would have to grant a hardship waiver, an action they are apparently unwilling to do without a court order. The distinction is without a difference in this case because the court finds that the Plaintiff has made a clear showing that he is entitled to the relief requested.

Background Facts

Prior to the start of the 2024-2025 season with Portland State University, Habib was diagnosed with patellar tendinitis in both knees and participated in rehab to treat and manage the diagnosis. Balmer Decl, Exh. 1, pg. 49-50 (MRI Results). He was also engaged in mental health therapy beginning in August 2024 for symptoms of adjustment disorder and depressed mood.

On November 4, 2024, Habib began his second season of competition at Portland State University. Habib played only in the first seven games of the season, amounting to 22% of season games. On November 24, 2024, Habib learned that his uncle died suddenly causing him emotional distress. Habib Decl. Habib played his last game on November 30, 2024, during which he reportedly exacerbated a preexisting injury by hyper-extending his knee. Habib Decl.

A letter from the PSU Associate Head Coach documents that Habib stepped back from competition in November 2024 “due to his mental health challenges” and to “prioritize his well-being and recovery.” Balmer Decl., Exh. 1, pg. 68. Habib’s absence from competition for the remainder of the season was solely “to address legitimate health needs.” Balmer Decl., Exh. 1,

pg. 68. The events leading to Habib's withdrawal from competition occurred prior to the second half of the playing season. *See* NCAA Bylaws 12.6.4.2.3.

Habib immediately sought treatment for his injured knee after the November 30, 2024 game. But, due to the negligence of the PSU Athletic Training Department, no contemporaneous records of his diagnosis and treatment were maintained. Current PSU athletic trainer Delaney Jamison, however, verified Habib's November 2024 injury and treatment during the winter of 2024. Balmer Decl., Exh. 1, pg. 14.

Habib's health records also show that he engaged in mental health therapy from December 27, 2024, through March 19, 2025 related to the loss of his uncle. Balmer Decl, Exh. 1, pg. 16-27. Therapy notes reflect a diagnosis of "adjustment disorder with depressed mood" and document the impacts of participation on the basketball team on his mental health.

Health records, including physical therapy records and medical records of treating physicians, reflect the ongoing treatment of Habib for a incapacitating knee injury from January 2025 to May 2025, including:

- Physical Therapist Parker Farabee's April 23, 2026 letter noting a January 2025 evaluation of Habib for a knee injury, a finding on initial evaluation of significant functional and sport limitations, and a statement that Habib "was unable to participate in intercollegiate athletics during his time under my care due to severity of the injury from ongoing pain and mechanical symptoms." Balmer Decl., Exh. 1, pg. 36. Farabee advised Habib to sit out the remainder of the season. *Id.*
- On February 19, 2025, Dr. Esther Choo saw Habib at Oregon Health and Sciences University (OHSU) and advised that he avoid further participation in basketball at

Portland State University for the rest of the season due to his knee injury. Balmer Decl, Exh. 1, pg. 29; Exh. 2, pg. 1.

- PA-C Jared Anderson's letter dated April 24, 2026 states that Habib had been a patient at OHSU for a right knee condition, had been recommended to avoid plyometric activities until resolved, and that "ultimately included the entirety of his 2024-2025 basketball season." Balmer Decl, Exh. 1, pg. 33.

In June 2024, Habib transferred to the University of Southern Indiana. Dr. Timothy Hambly, MD performed Habib's university physical and recommended that he continue sitting out of practice through the first half of summer workouts to complete rehabilitation of his knee. Balmer Decl., Exh. 1, pg. 66. He was ultimately cleared to play and participated in the 2024-2025 season at USI. Id.

On or about November 2025, USI submitted for a hardship waiver on Habib's behalf based on his inability to compete in the 2024-2025 season at Portland State. Complaint, para. 30. Upon request, USI submitted additional documents after January 16, 2026. The NCAA denied the application on April 22, 2026, stating:

"Requirements of the legislations are not satisfied: Specifically, in denying hardship waiver appeal, staff noted Student-Athlete was medically cleared for competition when he participated in seven contests during the 2024-2025 men's basketball season. In addition, he was unable to provide contemporaneous medical documentation from treating physician stating that Student-Athlete was incapacitated during the 2024-2025 season. Finally, he was unable to provide documentation of otherwise extraordinary circumstances to warrant relief from the legislation (e.g. medical misdiagnosis)."

Complaint, para. 32.

USI submitted a request for reconsideration on April 29, 2026, including additional documentation. Complaint, para. 37. On June 30, 2026, the NCAA denied the request for reconsideration, stating:

“Staff reviewed additional information submitted by Institution No. 4 on reconsideration and noted SA was medically cleared for competition when he participated in seven contests during the 2024-25 men’s basketball season. Additionally, while Institution No. 4 provided non-contemporaneous statements from SA’s treating physicians, Institution No. 4 was unable to provide contemporaneous medical documentation demonstrating SA was incapacitated due to injury prior to December 2024 when SA chose to step away from the men’s basketball team. As a result, staff was unable to identify extraordinary circumstances to warrant relief from legislation.”

Balmer Decl, Exh. 1, pg. 8.

On July 9, 2026, USI submitted an appeal with additional evidence and explanation of the gap in records – PSU’s athletic training department failed to keep contemporaneous records reflecting Habib’s November 2024 injury due to staff turnover. Complaint, para. 40. On August 4, 2026, the NCAA denied USI’s appeal. Complaint, para. 41.

Since entering the transfer portal on April 7, 2026, Habib has been recruited by several Division 1 basketball programs but has been unable to accept any offers due to the uncertainty of his eligibility status. Habib Decl, para. 26-28.

NCAA Hardship Waiver Rules

The NCAA permits requests for a waiver of the four-seasons of eligibility in limited circumstances. A permitted ground for waiver includes when an athlete suffers a medical hardship or injury that prevents them from playing out a full season. NCAA Bylaw 12.6.4, entitled Hardship Waiver, provides as follows, in relevant part:

Hardship Waiver. A student-athlete may be granted an additional year of competition by the conference or the Athletics Eligibility Subcommittee for reasons of “hardship.” Hardship is defined as an incapacity resulting from an injury or illness that has occurred under all of the following conditions: . . .

- (a) The incapacitating injury or illness occurs in one of the four seasons of intercollegiate competition as any two-year or four-year collegiate institutions or occurs after the first day of classes in the student-athlete’s senior year in high school;
- (b) The injury or illness occurs before the first contest or date of competition of the second half of the playing season that concludes with the NCAA

championship in that sport and results in incapacity to compete for the remainder of that playing season; and

- (c) The injury or illness occurs when the student-athlete has not participated in more than three contests or dates of competition or 30 percent of the maximum number of contests or dates of competition of the playing season that concludes with the NCAA championship”

Asai Decl, Exh. 1, pg. 15.

In a separate subsection, the Bylaws specify what “medical documentation” is required to support a hardship waiver application. Section 12.6.4.2.2, states, in relevant part,

Medical Documentation. Contemporaneous or other appropriate medical documentation, from a physician (a medical doctor) who administered care at the time of the injury or illness, that establishes the student’s inability to compete as a result of that injury or illness shall be submitted with any hardship-waiver request. Documentation from an individual other than a physician (e.g., chiropractor, physical therapist) may only be used to support the physician’s documentation. For a case involving a psychological or mental illness, the required contemporaneous or other appropriate medical documentation may be provided by an individual (e.g. psychiatrist, psychologist) who is qualified and licensed to diagnose and treat the particular illness.

Asai Decl, Exh. 1, pg. 16.

Analysis

A. Likelihood of Success on the Merits

1. Jurisdiction

Oregon lacks general jurisdiction over the NCAA. However, the connection between NCAA’s activities in Oregon and Plaintiff’s claim is sufficient to permit Oregon to exercise specific jurisdiction over NCAA under Oregon’s long-arm statute, ORCP 4L.

This is a case where Plaintiff’s claim has not come about *because of* or *but for* the defendant’s in-state conduct. Rather, the relationship among the defendant, the forum and the litigation is “close enough” to support specific jurisdiction in the absence of this but-for link. *See Cox v. HP Inc.*, 368 Or 477, 495 (2021). Here, the NCAA’s Oregon activities provide a basis

for an objective determination that Plaintiff's claims relate to, at least in part, Defendant's contacts with Oregon, making litigation in this forum reasonably foreseeable to the NCAA. In so finding, the court relies on the following facts relevant to jurisdiction:

- The hardship application at issue is based on Plaintiff's 2024-2025 season of competition at Portland State University, in Oregon;
- The underlying injury on which the hardship waiver is based occurred at Portland State University, in Oregon; and
- The NCAA based its denial of the hardship waiver application on the gap in medical documentation from providers in Oregon.

Therefore, this court finds case-specific links to Oregon that permit its exercise of specific jurisdiction over the NCAA in this action. The court's determination of jurisdiction is made without prejudice.

2. Clearly Ascertainable Right

In seeking this order, Plaintiff asserts his interests as an intended third-party "donee" beneficiary to the contract between the NCAA and its member institutions in the form of its Bylaws. Defendant contests Habib's rights under the contract, asserting that only the member institution has a right to seek a hardship waiver.

The hardship waiver provision, Bylaw 12.6.4, provides that "*a student-athlete* may be granted an additional year of competition by the conference or the Athletics Eligibility Subcommittee for reasons of 'hardship.'" Asai Decl, Exh. 1, at 15, (Bylaws, 12.6.4) (Emphasis added). It is only in the context of a denied hardship waiver that the Bylaws direct the *institution* to submit the denial for review by the subcommittee. *See* Asai Decl, Exh. 1, at 15-16, (Bylaws,

12.6.4.1.1) (“An institution may submit a denied hardship waiver to the Athletics Subcommittee.”)

The court finds that the clear and unambiguous language of the Bylaws confers a right and benefit to the student-athlete for a hardship waiver, making the student-athlete a donee under Oregon law. Habib, therefore, has an ascertainable right to seek enforcement of the Bylaws as they pertain to his hardship waiver.

Plaintiff alleges that the NCAA acted in bad faith and breached its duty of good faith and fair dealing by denying his hardship waiver based on the absence of “contemporaneous medical documentation.” The NCAA disputes this allegation can be a basis for relief because the duty of good faith cannot contradict the express contractual term that allows the NCAA to deny an application made without supporting contemporaneous medical documentation. *See Klamath Off-Project Water Users, Inc. v. Pacificorp*, 237 Or App 434, 445 (2010). And Defendant contends that the NCAA is entitled to deference when implementing its bylaws as a matter of law. *Josephine County School Dist. No. 7 v. Oregon School Activities Ass’n*, 15 Or App 185, 191-192 (1973) (where bylaws of a voluntary association are reasonable and valid and provide a mode for determining when relief shall be given or denied, redress cannot be sought in the courts). However, the NCAA’s actions are not immune from judicial review and can be subject to equitable or legal relief when its actions are arbitrary or capricious or in violation of their own rules, regulations or policies. *See Bloom v. NCAA*, 93 P.3d 621 (Colo. App. 2004).

This court finds that Plaintiff has indeed asserted a valid claim on the basis that the NCAA did not follow its own rules when it denied his hardship waiver and applied the Bylaws in an arbitrary and capricious way. The evidence supports Plaintiff’s contention that the NCAA acted in bad faith when it failed to credit the non-contemporaneous records he submitted as

“other appropriate medical documentation.” Bylaw 12.6.4.2.2 invites such documentation, stating: “Contemporaneous *or other appropriate medical documentation*, from a physician (a medical doctor) who administered care at the time of the injury or illness, that establishes the athlete’s inability to compete as a result of that injury or illness shall be submitted with any hardship-waiver request. . . .” (Emphasis added). Defendant denied Habib’s waiver on the basis that medical documentation was “non-contemporaneous,” and without addressing the other medical documentation corroborating Habib’s incapacitating injury.

The NCAA’s denial appears arbitrary because the record in this case shows that Plaintiff met the eligibility criteria for the hardship waiver, as defined by Bylaw 12.6.4. Habib had not participated in more than 30% of contests and suffered an injury before the second half of the playing season. The medical documentation submitted in support of the hardship waiver met both the criteria under Bylaw 12.6.4.2.2 and the NCAA Guidelines on waivers. *See Asai Decl*, Exh. 2, pg. 2. The physicians, physical therapists and diagnosticians who visited with and treated Habib, along with his PSU basketball coach, all agreed that his season ended in November 2024 due to medical necessity, both because of his mental illness and knee injury. The records from a medical doctor (Dr. Choo) who administered care during the time of the incapacitating knee injury reflected Habib’s inability to play the remainder of the basketball season. Records from Habib’s physical therapist support the record from Dr. Choo and make clear that Habib’s knee injury resulted in his inability to continue competing no later than January 2025 (during the first half of the playing season). *See Farabee note; Balmer Decl.*, Exh. 1, pg. 36.

The NCAA’s denial on the basis that these records were not “contemporaneous” is an arbitrary and capricious application of the Bylaws. The Bylaws explicitly allow for “other

appropriate medical documentation,” which was necessary in this case where PSU’s gap in record-keeping was explained by the staff turnover and other documentation corroborated Habib’s injury. In addition, there were also medical records that were recorded “at the time of the injury or illness,” including the records from OHSU documenting Dr. Choo’s treatment of Habib. These contemporaneous records appear dated within the first half of the season and document an incapacitating injury. The NCAA gave no reason why these records were inadequate to support Habib’s waiver.

For these reasons, Plaintiff made a clear showing that he was entitled to a hardship waiver by the NCAA and that the NCAA failed to follow its own rules or applied them in an arbitrary and capricious way when it denied his application on the stated grounds.

B. Irreparable Injury/No adequate remedy at law

If Plaintiff is not granted this temporary restraining order, he will be unable to participate in the 2026-2027 basketball season. Habib’s testimony at the hearing provided credible evidence that his lost opportunity this season is not theoretical or speculative. There is convincing evidence that Habib will be offered a roster spot were he to be deemed eligible to play this season. A trial on the merits of his complaint cannot happen prior to the start of the school year. The type of injury at issue here cannot adequately be remedied by monetary damages. Failure to grant the relief requested will cause Plaintiff to lose the chance to play Division 1 basketball for a fourth full season. The court agrees that the harm to Habib in losing his chance to play this year is irreparable.

C. Balance of equities in favor of Habib

Finally, the court finds that the balance of the equities and public interest weigh in favor of letting Habib play. Granting injunctive relief serves the compelling public interest of promoting

increased participation and competition in competitive college sports. For Habib, that has meant avoiding risks that affect his community and those that resulted in his brother's death, focusing on prosocial goals, becoming the first family member to study for a master's degree, and helping support his family members emotionally and financially. The NCAA Bylaws allow student-athletes four seasons of play and granting relief here means giving Habib an opportunity equal to that of all NCAA student athletes.

The court has considered the NCAA's stated harms in allowing Habib another season of play. Competitions won and lost based on the competitive edge one player may give a team over another; a roster spot taken that could have been offered another; inequitable application of eligibility limits. The court finds these values important and weighty, but that they do not tip the balance in the NCAA's favor for this student-athlete under the unique circumstances presented in this case.

ORDER

It is hereby ORDERED,

Plaintiff Ismail Habib's Motion for Temporary Restraining Order is GRANTED;

The National Collegiate Athletic Association NCAA is prevented from declaring Ismail Habib ineligible to participate in intercollegiate athletics during the 2026-2027 academic year; from prohibiting him from participating in intercollegiate basketball during the 2026-2027 year; and from taking any action against Plaintiff in retaliation related to his request for injunctive relief;

Ismail Habib is deemed eligible to compete in intercollegiate basketball during the 2026-2027 season;

This Order is Issued this 26th day of August, 2026 at 4:30 PM PST and expires on September 5, 2026, at 4:30 PM PST.



Hon. Celia A. Howes
Multnomah County Circuit Court