

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 269 OF THE ACADEMIC APPEALS COMMITTEE

September 26, 2002

To the Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Thursday September 26, 2002, and adjourned to October 1, 2002 to deliberate on the matter. The following were present at both the hearing on September 26, 2002 and at the deliberations on October 1, 2002:

Assistant Dean Jane Kidner, Chair
Professor Clare Beghtol
Professor Sherwin Desser
Professor Luigi Girolametto
Mr. Mark Braun

Mr. Paul Holmes, Judicial Affairs Officer (Secretary)

The following were in attendance at the hearing on September 26, 2002:

For the Appellant:

Ms. Z.S., (“the Student”)
Mr. Shaun Laubman, representative (Downtown Legal Services)

For the School of Graduate Studies:

Associate Dean (Physical Sciences) Rashmi Desai
Professor Shamim Sheikh, Graduate Coordinator, Graduate Department of
Civil Engineering
Professor Kim Pressnail, Graduate Department of Civil Engineering

This committee considered an appeal by the Student of the decision of the Graduate Academic Appeals Board, which held a hearing in this matter on October 25, 2001 and provided written reasons dated November 7, 2001 (found at **Tab 1** of the Statement of Appeal). The decision of the Graduate Academic Appeals Board dismissed the Student’s appeal from the decision of the Associate Dean R.C. Desai in his e-mail dated June 27, 2001 (found at **Attachment 2** of the Respondent’s materials) in which he refused the Student’s request to rewrite the failed exam in MIE 1601, and dismissed the Student’s appeal of the decision of the Examination and Degree Committee of the Graduate Department of Civil Engineering, dated June 15, 2001 (found at **Tab 5** of the Statement

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of Appeal). In that decision, the Examination and Degree Committee denied the Student's request to appeal her failure in CIV 1279H and as this was her third failed course she was asked to withdraw from the M.Eng program immediately.

The Student seeks the following remedies:

1. A finding that the failure in CIV 1174H does not constitute a failure for the purposes of invoking the "two failure" rule requiring a graduate student to withdraw from the program;
2. An order allowing a re-reading of the Student's final examination in CIV 1279H in accordance with the SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student;
3. An order that the Graduate Department of Civil Engineering allow the Appellant to re-write the make-up examination in MIE 1601H and use the examination she has already written for MIE 1601H in the Fall 2001 term as the make-up examination;
4. An order that the original grade of FZ assigned to the Appellant in MIE 1601H be removed from her transcript and be replaced by the mark she receives in the Fall 2001 term of the course MIE 1601H.

The Facts:

The Student is a mature student who is married and a mother of two small children. She is also a new immigrant to Canada, having obtained her undergraduate engineering degree in another country. English is her second language.

The Student was admitted into the Master of Engineering program in the Fall 1999 and during that term she enrolled in two courses and received a failing grade ("FZ") in one of those courses, CIV 1161H. The Student had faced difficult personal circumstances due to the fact that she was in her ninth month of pregnancy, and therefore the instructor allowed the Student to write a makeup examination, which she passed. The passing grade was substituted for the failing grade and only the passing grade appeared on her transcript.

During the Winter 2000 term, the Student enrolled in two courses – CIV 1174H and CIV 1169H. The Student failed CIV 1174H. At this point the student had one FZ on her transcript, in CIV 1174H.

During the Summer 2000 term, the Student enrolled in one course and passed that course.

During the Fall 2000 term, the Student enrolled in three courses – CIV 1174H (which she had previously failed), CIV 1446H, and MIE 1601H. The student

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passed CIV 1174H and the original FZ as well as the passing grade now both appeared on her transcript. The Student also failed MIE 1601H and received an FZ on her transcript for that course.

The Student testified with respect to MIE 1601H that at the mid term of the course she had an average mark and felt confident that she would pass the course. However, just days prior to the final exam, her young child was sick and in the hospital with a high fever and she was therefore unable to concentrate and properly study for the exam. Despite her difficult personal circumstances, the Student chose to write the exam and failed, causing her to receive an FZ in the course. The Student petitioned her FZ grade in MIE 1601H to the Examination and Degree Committee of the Graduate Department of Civil Engineering on compassionate grounds, and that petition was denied on March 8, 2001. As the Student was now in the position of having failed two courses and having two FZ on her transcript, the Student was asked by the Graduate Department to withdraw from the program. The Student then went to her professor in the Graduate Department of Mechanical and Industrial Engineering (MIE) and was granted the opportunity to rewrite the final examination on compassionate grounds due to her child's illness and her family responsibilities. Notwithstanding its former request that the Student withdraw from the program, the Graduate Department of Civil Engineering gave its support to the Student's request on compassionate grounds. A date was set for the re-examination to take place on May 31, 2001.

The Student testified that based on the promise of the Graduate Department that she would be permitted to re-write the exam in MIE 1601H, she prepared and studied for this exam up until just one week prior to the exam.

In the meantime, the Student enrolled in three courses in the Winter/Spring 2001 Term, including CIV 1279H, taught by Professor Pressnail. At the end of the term the Student wrote the final exam and believed she would pass the course. Professor Pressnail testified that he initially marked the exams of only ten students because he was under pressure to submit the marks for those students. They were on a list of students who had the potential to graduate at the end of the term in June 2001. Despite the existence of two FZ on her transcript, the Student was on that list. Three of the students who were in that group of ten students failed the exam, including the Student. The Student testified that she did not believe the mark she received in that course was an accurate reflection of how she had performed on the exam and therefore she went to see Professor Pressnail. The Committee heard conflicting evidence as to what took place during that meeting. The Student testified that Professor Pressnail was unhelpful and refused to give her a copy of her exam and refused to answer any of her specific questions. The Committee also heard testimony from the Student that Professor Pressnail told the Student she was not a good student based on the marks she had received in her other courses. Professor Pressnail testified that the Student was confrontational.

Professor Pressnail testified that for a variety of reasons, including compassionate grounds, he allowed all three students to write a supplemental exam. The Student wrote

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the supplemental exam and received a grade of FZ. The exams were marked by Professor Pressnail.

At this point the Student had three grades of FZ on her transcript and just one week prior to May 31st (the date set for the re-write of MIE 1601H) the offer to re-write was withdrawn and the Student was asked to withdraw from the program. The Committee heard testimony as to the casual manner in which the Student discovered the request to withdraw when she ran into the professor who had initially granted the rewrite.

The Student appealed the FZ grade in CIV 1279H to the Graduate Appeals Committee, requesting a re-read of her exam. That appeal was denied on June 15, 2001.

By letter dated June 29, 2001 the Student's candidacy in the Masters of Engineering program was terminated.

In the Fall 2001, the Student attended MIE 1601H (although not officially enrolled) and received permission from the Professor to write the exam even though it would not be marked and she would not receive an official grade. The Student wrote the exam. The Student further testified that the Professor kept her exam in his office, unmarked, and to this day she does not know how she did on the exam.

Decision

It is clear that the Student was under an enormous amount of pressure due to family circumstances and her situation as a new immigrant to the country. It is also clear that honest and sincere efforts were made by the Department of Civil Engineering to accommodate the Student based on compassionate grounds on several occasions when she received a failing grade on an exam. However, the Committee also noted that no special assistance or guidance was offered or provided to the Student throughout the school year despite her obvious difficult personal circumstances.

With respect to the request for relief that the student be permitted a re-read of her final exam in CIV 1279H, the Committee first wishes to state that it does not disagree with the reasons found in the decision of the Graduate Academic Appeals Board that "In the absence of evidence that the grading process was unfair or improper, or cogent evidence of some substantial error in the grading, the mark must be regarded by this Board as correctly awarded. The bare fact that a student disagrees with an instructor's grading provides no evidence at all of an error by the instructor." However, in this case the Committee heard new evidence going to the possibility of bias in the grading of the Student's paper. In particular, the Committee heard new evidence from the Student that prior to the supplemental exam the instructor was unhelpful, and refused to provide the Student with a copy of the first exam she wrote, answer any of her questions or shake her hand during a meeting. Professor Pressnail also testified that he felt the Student was a poor student based on his review of her transcript prior to the supplemental exam. Both the Student and Professor Pressnail testified that their meeting was unpleasant and

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confrontational. The Committee also heard evidence that the supplemental exam written by the Student was later marked by Professor Pressnail

In these specific circumstances the Committee was satisfied based on the new evidence that there was a reasonable apprehension of bias on the part of the Student such as to question the objectivity of the mark given to the student in CIV 1279H. The Committee does not wish to make any finding that the Professor was biased in his marking, but rather that the appearance of impartiality and fairness in the evaluation process is important and in the totality of circumstances in this case, it is reasonable that the Student may have believed there to be bias on the part of the Professor. Therefore this Committee grants the Student's request to have her mark in CIV 1279H re-read subject to the SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student.

With respect to the request for relief that Graduate Department of Civil Engineering allow the Student to re-write the make-up examination in MIE 1601H and use the examination which she has already written for that same course in the Fall 2001 term as the make-up examination, the Committee grants her request. Again in these very particular circumstances the Committee finds that the Graduate Department made the student a promise, which the Student relied upon by spending a great deal of time studying for the exam, and therefore the Student ought now to be permitted to write that exam. Since the Student has already re-written the exam (in the same course taken the following term) the Committee finds that the Student be permitted to have that grade reported on her transcript. The original grade of FZ will continue to appear on her transcript.

With respect to the request for relief that a finding that the FZ grade in CIV 1174H does not constitute a failure for the purposes of invoking the "two failure" rule requiring a graduate student to withdraw from the program, the Committee wishes to make clear at the outset that it does not wish to interfere with the Graduate Department of Civil Engineering's right to set its own policy with respect to the consequences to students for poor academic performance and circumstances in which a student will be asked to withdraw from the program. It is not the job of the Academic Appeal Committee to review the entire grading practices of a department. However, on the facts of this particular case, the Committee finds that the Student's original grade of FZ in CIV 1174H ought not to count toward the two-failure rule such as to trigger her removal from the program. The reasons for its decision in this particular case relate to irregularities and ambiguities in both the wording and the application of the two-failure rule.

The Committee heard evidence from the Graduate Department of Civil Engineering that the two-failure rule is an accepted policy which is generally applied to students in the Civil Engineering program, and that the two-failure rule has been used in the past to include a failed course that is subsequently taken and passed.

The rules regarding the consequences of failure of courses by a graduate student are written down in two places. First, on the Graduate Department of Civil Engineering's

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web site, the rule is set out as follows under the general heading Graduate Degree Programs:

“Additional Requirements

...

3. Course Failures: Students who fail one course are expected to repeat or replace the course. Students who fail two or more courses will have their registration and candidacy terminated.” (Tab 15 of the Statement of Appeal)

Further, the School of Graduate Studies Calendar states the following:

“Effect of Failure in or Failure to Complete a Graduate Course
...failure in a graduate course or failure to satisfactorily complete a graduate course may result in a recommendation from the graduate unit to the School that the student’s registration and candidacy be terminated. A student who is permitted to continue must repeat the failed or incompleting course...Both the failed or incompleting course, and the grade in the repeated or replaced course will appear on the student’s academic record.” (Tab 16 of the Statement of Appeal)

The Committee found several problems with the rule as written down and applied in this particular case. First, nowhere does the rule clearly state that it will apply to a course which is failed and is subsequently taken and passed. Further the policy as it has been applied to the Student has not been consistent, creating the potential for misunderstanding. The Student was also told on at least one occasion by Associate Dean Desai that the policy did not apply in her situation. Finally, the Committee heard evidence from both Associate Dean Desai and the Graduate Coordinator Professor Sheikh that both were uncertain and confused as to the proper application of the policy in this situation. Neither was able to point to any written policy clarifying the application of the policy. Out of an abundance of caution and fairness to the student, the Committee finds that in this particular case the two-failure rule ought not to apply to CIV 1174H. The Committee recommends that the Department of Graduate Engineering revise its written policy to accurately reflect its practice.

A minority of the Committee on this point found that the FZ in CIV 1174 ought to count as a failure for the purposes of the two-failure rule and that the two-failure rule ought to be applied in this case. The Department of Civil Engineering stated the rule to all students at the beginning of the program and listed the rule on its web site, which all students were told to read. The Student was also made aware of the rule when she was asked to withdraw from the program prior to her third failed course. Thus a minority of the committee believed that the rule was properly communicated to the Student.

The Decision of the Committee is by a majority decision and therefore the appeal should be allowed. The Committee therefore orders that:

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1. The Graduate Department of Mechanical and Industrial Engineering and the Graduate Department Civil Engineering fulfill their promise to allow the Student to re-write the exam in MIE 1601H, and use the mark she obtains in the examination she has already written in MIE 1601H in the Fall 2001 as that make-up examination. If she failed the examination, the student is not granted further avenues of process and is dismissed from the program.
2. If the result of MIE 1601 H is a passing grade, the Student be granted a re-reading of her final examination in CIV 1279H in accordance with the SGS Procedural Guide for Externally Rereading an Examination Written by a Graduate Student.
3. If the re-read of CIV 1279H results in a passing grade, that grade will be substituted for the FZ that currently appears on the Student's transcript and the FZ grade in CIV 1174H shall not be counted as a failure for the purpose of invoking the two failure rule to remove the Student from the program.

Respectfully submitted,

Paul J. Holmes
Secretary

Jane Kidner
Chair

October 25, 2002