

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

**REPORT NUMBER 312 OF THE ACADEMIC APPEALS
COMMITTEE**

December 5, 2006

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Tuesday December 5, 2006 at which the following were present:

Assistant Dean Kaye Joachim, Chair
Professor Ellen Hodnett
Professor Michael Marrus
Ms. Estafania Toledo
Dr. John Wedge

Mr. Anthony Gray
Secretary of the Academic Appeals Committee

Appearances:

For the student:

Mr. R

For the University of Toronto at Scarborough

Professor and Associate Dean, Nick Cheng

The Appeal

The student is appealing the April 17, 2006 decision of the Sub-Committee on Academic Appeals (the Sub-Committee) to refuse his petition for continued registration at the University of Toronto at Scarborough.

Leave to extend the 90 day deadline for appeal.

The UTSC calendar and petition guidelines state that a student has 90 days (approximately 3 months) to appeal a decision to the Academic Appeals Committee of Governing Council (“Governing Council”). The student’s notice of appeal was submitted on September 13, 2006 (approximately 5 months) from the date of the decision of the Sub-Committee.

The preliminary issue for the panel was whether to extend the time limit for filing an appeal.

Background Facts

The student was admitted to UTSC for the Fall 2004 term on the written condition that he achieve a cumulative GPA of 1.6 in the first three full courses (six term-courses).

The student registered for five half-courses in September 2004 and obtained a sessional GPA of 1.48. In January 2005 he enrolled in a further five half-courses and obtained a sessional GPA of 1.6; thus the cumulative GPA was below the required 1.6.

The student was denied permission for further registration. The deadline for filing a petition against that decision was 90 days after May 31, 2005 (approximately August 2005).

The student filed a petition seeking to continue his registration at UTSC on January 20, 2006, which was considered on the merits despite the delay in filing the petition.

The basis for the student’s petition was that he had been suffering from chronic allergic symptoms throughout the fall of 2004 and early 2005. He was seen by a specialist in February 2005 and was diagnosed with a deviated nasal septum and chronic allergic rhinitis for which he was treated with inhalants and medication. He asserts that his condition worsened after March 6, 2005 (the deadline for dropping courses) and negatively affected his academic performance.

His petition was denied on February 17, 2006 on the basis of inadequate documentation to support his petition that his condition worsened significantly during the winter 2005 term and based on the fact that he should have withdrawn from the courses if his medical condition was interfering with his academic performance.

He filed a second petition on the same grounds on March 3, 2006 which was again denied for the same reasons on March 8, 2006.

The student then appealed to the Sub-Committee on April 3, 2006. At this stage he submitted a medical report from an ENT specialist which confirmed the diagnosis of

deviated nasal septum and chronic allergic rhinitis. He was first seen by the specialist in February 2005 with follow up visits in March and June 2005. He underwent surgery in September 2005.

The Sub-Committee released its decision on April 17, 2006 denying the student's petition on the basis that the medical documentation presented did not support a significant worsening of the student's medical condition between January and April 2005 to excuse either the poor academic performance or the failure to withdraw from the courses before March 6, 2006.

Reasons for failing to file an appeal within 90 days.

The student confirmed that he was aware of his right to file a petition, and then proceed with an appeal to the Sub-Committee, with a further appeal to Governing Council.

When he received the Sub-Committee decision he was so disappointed by their decision he did not think it was worth while to proceed any further. Later he changed his mind and decided to pursue the appeal. That is the extent of the student's reasons for the late appeal.

The student also pointed out that the Sub-Committee's decision was not accompanied by any written material specifically advising him of the deadline to appeal. However, as mentioned above, the student was aware throughout the process of his right to appeal to Governing Council and the Calendar and UTSC Petitions Guide for Students clearly stated the appeal process and deadlines. Thus, the lack of written material on the 90 day deadline played no part in *this* student's failure to meet the deadline.

Nonetheless we note that subsequent to this student's appeal, and effective September 1, 2006, the University Policy on Academic Appeals within Divisions states that the existence of the right to appeal to Governing Council should be clearly communicated, *in writing*, to students for whom the appeal was denied.

The Decision

According to the process at UTSC, students may appeal the denial of an academic petition twice (to the Sub-committee on Academic Appeals and then the Academic Appeals Committee of Governing Council). Each appellate body is charged with considering the student's petition with fresh eyes, without any deference to the previous decision-maker. There is no obligation on the student to establish grounds for an appeal in the sense of proving that the previous decision-maker made an error, overlooked significant evidence, etc. Each level of appeal is asked to consider the decision on the merits, based on the evidence before it.

Thus, students are offered a very generous appeal process to challenge negative academic decisions. The only restriction on the student's right to appeal is the relatively modest requirement to pursue appeals diligently, within 90 days of the decision appealed from.

This Committee's Terms of Reference state at section 3.2.1:

An appeal to the Committee shall, except in exceptional circumstances, be commenced by filing a Notice of Appeal in accordance with the rules of the Academic Appeals Committee no later than 5:00 p.m. on the ninetieth (90th) calendar day after the date of the decision from which the appeal is being taken.

Establishing deadlines for an appeal serves the important purpose of ensuring that academic disputes are dealt with in a timely and efficient manner.

If the 90 day deadline means anything, it appears to this panel that a student seeking permission to file a late appeal has an obligation to offer an explanation of the "exceptionable circumstances" for the delay in filing an appeal. What constitutes exceptional circumstances will vary, depending on the facts of the case, the length of the delay, the complexity of the issues in dispute, medical incapacity, etc.

Once exceptional circumstances have been established, it would be appropriate to consider other factors such as the prejudice, if any, to the responding party in permitting a late appeal.

In this case, the panel is satisfied that the student has not offered a reasonable explanation or demonstrated exceptionable circumstances for the delay of two months in filing the appeal. Indeed, the student has offered no explanation other than that he did not initially think it was worth while at the time and later changed his mind.

The request for permission to file the appeal beyond the 90 day deadline is refused.

The appeal is dismissed.

Respectfully submitted,

Kaye Joachim
Chair