

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report 389 of the Academic Appeals Committee
August 23, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Thursday, June 29, 2017, at which the following members were present:

Professor Hamish Stewart, Chair
Professor Jan Mahrt-Smith, Faculty Panel Member
Ms. Susan Froom, Student Panel Member

Hearing Secretary: Ms Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student-Appellant:

Mr. C.O. (the Student)
Ms. Clara Ryu, Law Student, Downtown Legal Services
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal Services

For the Faculty of Applied Sciences and Engineering:

Professor James Davis, Associate Professor, Teaching Stream
Mr. Don MacMillan, Faculty Registrar

In Attendance:

Ms. Vanessa Laufer, New Chair of the Academic Appeals Committee (Observer)
Mr. John F. Monahan, New Chair of the Academic Appeals Committee (Observer)

Overview

The Student appeals from a decision of the Academic Appeal Board (AAB) of the Faculty of Applied Science and Engineering, dismissing his appeal from a decision of the Faculty's Committee on Examinations (CoE), dismissing his petition for late withdrawal without academic penalty from four courses in the Fall 2015 term.

Motion

The Faculty, as it routinely does, asks that “the names of any and all staff members and operators ... who acted on behalf of the Faculty ... be redacted ... and be replaced by position titles or by ‘the Faculty’.” (Faculty Response, p. 1). The Student consents. The motion is therefore granted. However, as he explained in Report #367, the Chair of your Committee doubts that such a motion should be granted as a matter of routine.

Proceedings in the Faculty

In 2010, the Student enrolled as an undergraduate student in the Chemical Engineering program in the Faculty of Applied Science and Engineering. In the Fall 2015 term, he was in his final year of the program, but was on repeat academic probation. His transcript indicates that he took four courses that term and was assessed as follows:

	Weight	Numerical mark	Letter grade
CHE323H	0.50	50	D-
CHE430Y	1.00	60	C-
CHE565H	0.50	50	D-
MIE488H	0.50	39	F

At the end of the term, his cumulative GPA was 1.51 and his sessional average was 55%. In accordance with the Faculty’s policies, he was deemed to have failed the term and was refused readmission to the program.

In January 2016, the Student petitioned the CoE on the basis that he anticipated an increase in his mark in CHE430Y. This petition was dismissed and the Student’s appeal from that decision was dismissed by the AAB, and there was no increase in the mark for that course. The Student did not appeal further from the AAB’s decision concerning his mark in CHE430Y.

In July 2016, the Student again petitioned the CoE, asking for late withdrawal without academic penalty from the four courses that he took in the Fall 2015 term. The CoE dismissed the petition. The Student’s appeal to the AAB was also dismissed. He now appeals to your Committee.

Decision

In his petition to the CoE and again in his appeal to your Committee, the Student relies on the following factors to explain his poor performance on the Fall 2015 term: an anxiety disorder, the death of his grandfather in July 2015, and the death of his uncle in November 2015.

In May 2015, the Student was diagnosed with an Anxiety Disorder Not Otherwise Specified. The Student attended six counselling sessions with a psychologist from U of T Health and Wellness between May 13 and June 18, 2015. There is no evidence that the student attended any further counselling sessions at U of T subsequent to June 18, 2015; further visits were for the purpose of obtaining documentation for his appeal (Appeal Tabs F, G, H).

In July 2015, the Student's grandfather died in Nigeria. The Student states that he was very close to his grandfather and that "[h]is anxiety and low mood worsened, as did his difficulties with concentration and memory" (Student's Statement of Appeal, para. 21). It appears that the Student did not mention these symptoms or the death of his grandfather during his brief meetings with the psychologist on Sept. 15 and 22, 2015, nor is there any evidence of the student seeking any counselling or medical assistance to help with his condition (Appeal Tab F).

The Student states that he had a panic attack during a mid-term test in CHE565H on November 2, 2015. He failed this test. The student states that he suffered a further panic attack on November 5, 2015, for which he sought medical care from a physician. The physician notes the student had a "panic attack stemming from significant personal stressors" and confirmed that the condition resulted in a "Serious" degree of incapacitation on academic functioning during the period November 4 - 6, 2015. The physician writes: "It is entirely plausible that his academic functioning was adversely affected beyond the time period around our first encounter in November 2015". However, the physician declined to provide a formal diagnosis, but instead referred the student to "the counselling and mental health services at U of T" and deferred to their records for further details. (Appeal Tabs S, T, U, V). Despite the referral, the student did not seek further treatment for his condition.

On November 7, 2015, the Student's uncle was killed in a traffic accident in Nigeria, and the Student learned of this tragedy some days later. The Student states that he was close to his uncle and that his "sadness over the loss of his uncle, so shortly after the loss of his grandfather, made it even more difficult for him to focus on his academic work" (para. 23). The Student states further that his grief caused him to withdraw from others and struggle with completing assignments and that this resulted in a low mark on a group project. The tragic death of the Student's uncle occurred very shortly before the drop date and was unpredictable. Yet the Student did not bring this situation to the attention of the Faculty or seek any accommodation in relation to it. As the representatives of the Faculty stated at the hearing, had the Student promptly brought this event to the attention of the Faculty and documented its effect on him, it is quite possible that the Faculty would have provided some accommodation or granted a request for late withdrawal without penalty. But the Student chose instead to continue with his courses. Indeed, the Student did not seek late withdrawal until July 2016.

The Student is familiar with the Faculty's processes, including its processes for obtaining accommodations, having received a number of accommodations during his enrollment in the Faculty (Faculty Response, pp. 2-4). Going back to the fall of 2012, and again in the winter of 2015 there is a record of the student citing chronic and severe anxiety and depression as having an adverse effect on his academic performance. In requesting previous accommodation, the student had stated a plan to meet with the University's Counselling and Psychological Services for treatment for chronic severe anxiety. In a previous decision dated February 28, 2013, the AAB appropriately advised the Student as follows:

... the Board expects you to make full use of the resources on campus that can assist you in achieving academic success: registering with Accessibility Services to ascertain how your medical condition might be accommodated with respect to academic activities

(specifically, examinations); visiting the Academic Success Centre and making use of the services of their learning strategists, and, of course, to continue treatment programs prescribed by your medical team. The Board also expects you to be in regular contact with your undergraduate academic counsellor.

The Student was registered with Accessibility Services during the fall 2015 term and did receive an accommodation of additional time to write final exams and one mid-term (CHE565H1) as an accommodation for his anxiety disorder. The student states that he did not receive an extra time accommodation for his other mid-terms and quizzes (para 27). During the hearing, the student's legal representative confirmed that the student was registered with Accessibility Services during fall 2015, that extra time accommodation is only granted if formally requested by the student and that the Student did not formally request this accommodation for all of his mid-terms and quizzes. Yet, during the Fall 2015 term, the Student did not bring his difficulties to the attention of the Faculty. He ascribes this decision to "his tendency to be guarded and withdrawn from others" (para. 30). Your Committee accepts this self-description, but, in light of the Student's experience with the Faculty, does not find it to be a satisfactory explanation for his failure to approach the Faculty for assistance.

The Faculty's "drop date" in the Fall 2015 term was November 8. The Student did not withdraw from any courses by that date. As your Committee has often stated, late withdrawal without academic penalty is a remedy that will rarely be granted. As was said in Report #375:

The remedy of late withdrawal without academic penalty is an extraordinary remedy, reserved for unusual and unique situations. The idea of "drop dates" indicates that the University expects that a student will make a decision whether to continue in a course by a set date in the term. But by the drop date, a student is expected to have assessed his or her situation and made a decision. Once the drop date passes, the implication is that the student has decided to continue on in the course. Exceptions to this policy are rare, but could include situations where unexpected and unforeseeable circumstances occur after the drop date, where already existing circumstances become unpredictably worse, or where already existing circumstances do not reasonably resolve.

(See also, among others, Report #264, Report #314, Report #367, and Report #373.) Most of the factors that the Student points to were already existing circumstances and there is no indication that they became worse after the drop date. Your Committee finds that the Student would have been reasonably aware of his difficulties prior to the drop date.

Your Committee finds that the Student has not demonstrated that his situation in the Fall 2015 term justifies the extraordinary remedy of late withdrawal without academic penalty and that the decisions of the CoE and the AAB were fair and reasonable applications of the Faculty's and the University's policies.

Additional Comments

Under the heading "Other Considerations", the Student notes that he had almost completed his program when he was refused readmission and that, if readmission continues to be refused, he

may not be able to complete a minor program that is not available at any other Canadian universities. As your Committee has noted in previous decisions, considerations of this kind are irrelevant in assessing the reasonableness of a division's decision-making (see, for example, Report #280).

The Student did not argue that the reasons of the CoE or the AAB were inadequate. Nevertheless, your Committee found the reasons of those bodies to be unhelpful and would like to restate the importance of divisions' providing students with adequate reasons for their decisions. In the case, the CoE's reasons were brief and generic. The material portion of the AAB's reasons for decision were conclusory and even briefer; they read as follows:

The Board carefully reviewed the information, and, while sympathetic to your circumstances and challenges, felt that no rule or policy was applied to you unfairly in this case.

No-one reading those reasons would know why their petition had been dismissed. As your Committee stated in Report #367, an appeal from the same division of the University:

It is a basic and uncontroversial principle of procedural fairness that a tribunal that makes decisions affecting the rights and interests of the parties before it should provide the parties with reasons for its decision for the benefit of the parties, the public, and any tribunal that might review the decision. The reasons need not be lengthy or intricate, but should indicate the facts and the principles that led the tribunal to its conclusions. As your Committee stated some 12 [now 16] years ago ... (Report #258 of the Academic Appeals Committee, December 14, 2001):

... elementary fairness to a student seeking relief requires that a tribunal publish at least a summary of the reasons for its decision. Published written reasons for a decision not only make the process more transparent, and therefore more credible, but may guide the student and the division with respect to future matters. They will also be of assistance to superior tribunals to which an appeal is taken.

At the hearing of the appeal, it became clear that the AAB had indeed carefully considered the Student's petition and had good reasons for dismissing it; those reasons could have been outlined in the letter to the Student.

Conclusion

The appeal is dismissed.

Professor Hamish Stewart
Senior Chair, Academic Appeals Committee of Governing Council