

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #385 of the Academic Appeals Committee
July 26, 2016

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on May 27, 2016 at 1:30 pm, at which the following members were present:

Ms. Sara Faherty, Chair
Mr. Alex Ivovic, Student Member of Academic Board, Governing Council
Professor Jan Mahrt-Smith, Faculty Member of Academic Board, Governing Council

Secretary: Krista Osbourne, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances
Jenna Glicksman, Office of Appeals, Discipline and Faculty Grievances (Observer)

Appearances:

Ms. V [REDACTED] T [REDACTED], Student-Appellant

For the University of Toronto Faculty of Arts and Science:

Professor Anne-Marie Brousseau, Associate Dean, Undergraduate

I. Appeal

The Student appeals a decision of the Academic Appeals Board of the FAS dated June 22, 2015. In that decision the Academic Appeals Board reviewed a decision of the Committee on Standing, which had refused the Student-Appellant's request for a deferral of three final examinations (in ECO208Y, ECO220Y, and LAT202H) and the completion of two missed term tests for ECO220Y. In its June 22 ruling the Academic Appeals Board found that the Committee on Standing had been correct when it concluded that the Student-Appellant had not submitted a medical note that was appropriate to cover her request. Specifically, the Board noted that "regulations state that students with chronic illnesses must provide medi[c]al documentation for the specified date on which the illness was acute or a letter from Accessibility Services indicating that they were seen at the time of the flare up."

II. Intra-Hearing Motion

Student-Appellant's motion to submit additional evidence. During the hearing the Student-Appellant made a request to submit further documentary evidence. She offered an Article from CBCNews that was posted on March 18, 2016. The article, titled, '*Pet bereavement days*' now

offered by some U.S. companies, listed several examples of employers across North America whose bereavement policies include some flexibility for employees dealing with the death of pets. The Faculty of Arts and Science did not object to the article being entered into evidence. The additional documentary evidence was accepted.

Professor Brousseau explained the Faculty of Arts and Science does, in fact, allow students to defer exams when they submit evidence of the death of a pet. Apparently the request was not made at the time of the exams in question. However the issue is not material, since the Student-Appellant did not write on April 3, or 4, 2014, the days around death of her cat. The Division scheduled a retake of the tests she was scheduled to write on those days. The retake for tests #1 and #2 in ECO220Y were scheduled on April 11, 2014. The Student-Appellant did not appear on that date, either, rendering the issue of whether the Faculty of Arts and Science defers exams for students whose pets have died immaterial in this matter.

III. Facts

The Student-Appellant had multiple problems during the Winter term of 2014. At different points in this process she has offered different explanations for her failure to complete academic work that term, including medical reasons involving joint stiffness, legal issues, dental problems, the death of a pet, depression, and symptoms related to menopause.

The Student-Appellant missed five important exams during April of 2014. On April 3 and April 4 she was scheduled to write two term tests in ECO220Y. Retakes of those two exams were scheduled on April 11, but the Student-Appellant missed that test date, as well. The Student offered evidence that she had a dental issue near that date, but the Verification of Illness Form indicated that the level of her incapacity on April 11 was “negligible” and “unlikely to have an effect on ability to fulfill academic obligations.” The Student-Appellant also missed three final exams that were scheduled in April of 2014: ECO220Y which took place on April 15, 2014; ECO208Y, which took place on April 16, 2014; and LAT102H which took place on April 23, 2014.

The set of reasons to which she devoted most of her remarks at the hearing was the legal problem. The Student-Appellant reported that starting in January of 2014 she became entangled in highly emotional litigation over the estate of her mother in a dispute with her brother. The Student-Appellant found this legal battle distracting and time-consuming. The student also submitted a Verification of Illness Form documenting her “serious” impairment from March 14, 2014 to April 30, 2014. The Student-Appellant suggested that her multiple legal, personal, and health issues were connected. This Committee notes that the Student-Appellant also devoted much of the hearing to describing her efforts to comply with the policies and procedures of the University, the Faculty of Arts and Science, and Accessibility Services. The Student-Appellant attempted to register with Accessibility Services at the end of the term in question, but was unable to garner their support for this petition.

Accessibility Services can be very helpful in assessing the needs of students with on-going issues, like the Student-Appellant, but in this case that has not happened. The Student-Appellant asked for their support for her petition, but that request was declined.

The Student-Appellant recounts having medical and legal difficulties for the entire term, but she did not try to register with Accessibility Services until April 3, 2014—the day she missed her first term test. Upon the Registrar’s recommendation, the Student-Appellant met with a disability accommodation specialist. The Student-Appellant was unable to clarify what happened next. It is possible the Student-Appellant did not distinguish between the Faculty of Arts and Science rules and regulations, and the advice she was getting from her Accessibility Services counsellor. She was unable to effectively clarify this point at the hearing, but it seems the Student-Appellant believed that the only medical professional she could seek documentation from was the one that Accessibility Services had recommended. Whatever the underlying source of confusion was, the end result is that the Student-Appellant does not have the support of Accessibility Services on this petition.

IV. Decision

The central piece of documentation in this file is a single *Verification of Student Illness or Injury* form. The Division declines to rely on the form on the grounds that it requires students seeking deferrals based on medical claims to see their doctor at the time that they are ill, and close to the date of the exam in question. Indeed, the form itself includes the following sentence: “This form is based on examination and applicable documented history at the time of illness or injury, not after the fact.”

The form that the Student-Appellant submitted has three pertinent dates:

1. it is based on a single visit the Student-Appellant made to Dr. James Choi on March 18, 2014; the Student did not acquire any documentation during this initial visit;
2. n December 4, 2014 the Student asked Dr. Choi to fill out the form;
3. it was revised by Dr. Choi, at the Student-Appellant’s request, on August 7, 2015.

The student approached her doctor three times relative to this petition: on March 18, 2014; December 4, 2014; and August 7, 2015. But only the first visit, on March 18th, involved a medical examination and assessment. The December 4th exchange was necessary because it was then that Dr. Choi filled out the *Verification of Student Illness or Injury* form based on the March visit that had occurred nine months earlier; and the August 7, 2015 visit, another eight months after the second contact, was when Dr. Choi filled in specific dates in the “additional comments” section.

Two more important notes on dates:

4. Dr. Choi lists the Student-Appellant’s incapacity as starting on March 14, 2014 and he lists the anticipated end date as April 30, 2014; and

5. In August of 2015, one year and five months after his single visit with the Student-Appellant, Dr. Choi wrote in the section some “additional comments”: “April 3, 4, 15, 16, 23, 2014 as well.”

Simply put, the Division has taken the position that a visit on March 18, 2014, was not close enough in time” to the missed exams (April 3, 4, 11, 15, 16, and 23, 2014) to reliably document the Student-Appellant’s condition on those test dates. Since the April 11 date was a re-take date for the exams missed on April 3rd and 4th, the Division reasons that the Student-Appellant may not rely on a medical visit that took place 23 days, or more than three weeks, before the first relevant missed exam date in question.

The Faculty of Arts and Science Calendar sets forth its policies on deferred exams and medical documentation in great detail. A governing premise is that “Students who are too ill and/or incapacitated *at the time of the examinations* should petition to defer the examination they are unable to attend due to their medical condition.” [Emphasis added.] A related but distinct rule is “the physician’s report must establish that the patient was examined and diagnosed *at the time of illness*, not after the fact. The Faculty will not accept a statement that merely confirms a later report of illness made by the student to a physician.” [Emphasis added.] Finally, there are provisions directed specifically at students with disabilities and long term health issues.

The timeline set forth above invokes both of these principles. In this case the Academic Appeals Board determined that the 23 day gap between the Student-Appellant’s doctor’s appointment and the exam date violated these principles. The Student-Appellant may have been ill on March 18, 2014, the day she saw the doctor, but that did not establish that she was ill on the mid- and late-April days she could have written the deferred exams. The fact that the doctor wrote in an end date several months later, and added specific exam dates another year later did not cure this fundamental deficiency in the timeline. Since the student asserts that she was ill on the days of the exams, she needed a note verifying her illness on those dates.

The University has an alternative system for students with chronic health problems. “Students with chronic illnesses must provide medical documentation for the specific date on which the illness was acute, or a letter from Accessibility Services for those registered for such a disability (indicating they were seen at the time of flare up, etc.).” As this last provision suggests, there is a separate set of processes for students with disabilities who have registered with Accessibility Services. Pursuant to the first rule regarding seeing the doctor at the time of illness, the dates added to the form more than a year later cannot document that the Student-Appellant actually suffered from flare-ups on those dates.

When asked why the Division did not offer more specific guidance to students regarding when a doctor’s visit was considered to be sufficiently close in time to the relevant exam date, Professor Brousseau explained that in order to be appropriately flexible and tailored to specific circumstances, the FAS did not give a specific timeframe, but rather chose to treat each petition individually based on the circumstances of the request. This allows students in unique circumstances to explain the gap between their doctor’s visit and the exam. This Committee appreciates the Faculty’s emphasis on individual, flexible analysis, and understands its reluctance to give setting forth a rigid set of time frames in its calendar. However in the interest

of fairness and transparency, a specific comment on the individual facts of a case might be inserted into Appeal Board Decisions, so students can better understand how rules were applied in their case. At this hearing Professor Brousseau asserted that three weeks was too long in this case, and that if the Student-Appellant wished to miss exams based on her medical condition she should have seen a doctor on or near the days of her exams, or at least offered an explanation as to why that was not possible. The Student may not have completely understood this point. At some points she said that her *Verification of Student Illness or Injury* form had been rejected because it was submitted retroactively. The Division emphatically rejected that analysis, pointing out that its policies expressly allow for the retroactive submission of forms. The Division stressed that the reason it refused to rely on the *Verification of Student Illness or Injury* form was because the gap in time between the date of the doctor's visit and the dates of the missed exams.

The Student-Appellant appears to have responded to this argument, first raised by the Committee on Standing, by asking her doctor to fill in the specific dates of her missed exams on the form, which he did do, seventeen months after the date of the only medical appointment he had with the Student-Appellant. This Committee is convinced that both the Student-Appellant and her doctor acted in good faith. Because the doctor had filled out a six week period of serious incapacitation, he undoubtedly concluded that the Student-Appellant was affected on those exam dates, all of which fell within the six week period of impairment. It is obvious that the Student-Appellant provided him with those exam dates (forgetting the April 11 retake date). However there is no suggestion that the Student-Appellant was acting unethically: she apparently believed that this additional detail would help the FAS assess her petition. This amendment was honest, but, unfortunately, not helpful. The Student-Appellant did not appear to understand the Division's objection to the gap in time between the visit and the exam dates. She describes herself as having a chronic condition with flare-ups, but does not seem to understand that it is the growing gap in time between her actual illness and the doctor's visit as well as the growing gap in time between the exam dates and the doctor's visit to which the Division objects.

The fact that the time period listed on the form, from March 14, 2014 to April 30, 2014 covers more than six weeks is not sufficiently specific to the Student-Appellant's condition, argues the division, because "students with chronic illnesses must provide medi[c]al documentation for the specific date on which the illness was acute, or a letter...indicating they were seen at the time of the flare up." The *Verification of Student Illness or Injury* form does not indicate whether the six week time period it describes involved a chronic illness with intermittent periods of incapacitation, or whether the Student-Appellant was seriously impaired in her ability to do academic work for that entire period. However in her petition the Student-Appellant adopts the language of a "chronic illness" with "flare ups," and indicates that she continued to attend classes throughout the period. Her argument is that she has established those flare ups by submitting a revised *Verification of Student Illness or Injury* form that includes the dates of her exams as dates of flare ups. This argument is difficult to credit, since the gap in time between the actual condition and the documentation of those flare ups is more than a year.

There are other problems inherent in the template provided by the *Verification of Student Illness or Injury* form. The original form identified the start date of the Student-Appellant's incapacitation as being March 14, 2014, and the "anticipated" end date as being April 30, 2014.

Note, however, that this form was not actually completed by Dr. Choi until more than eight months after the single visit upon which it is based. It is impossible to determine how the medical professional interpreted the word “anticipated” when it is written months after the end of the period he was describing. Was April 30, 2014 the date he actually predicted would be the end of this episode when he saw the Student-Appellant on March 18, 2014? Or, when she requested the form in December, nine months after that visit, is that a date that she reported to him as marking the end of her medical difficulties? Again, this Committee notes that there is no evidence that either the Student-Appellant or the doctor acted in bad faith, but nonetheless the form does not answer the questions raised in this appeal. When he added in the exam dates in August of 2015, seventeen months after the March 14, 2014 visit, he was accurately reporting that those dates fall within the time frame he’d listed, but surely he was aware that the Division could make that calculation on its own. Did he think he was actually verifying the Student-Appellant’s condition on those specific dates, well over a year after his sole medical examination of the Student-Appellant? That seems unlikely. This Committee cannot determine why the doctor added the language and listed the dates that he did. It may have been that he was frustrated or baffled by the *Verification of Student Illness or Injury* form when he hand wrote in a note verifying that April 3, 4, 15, 16, and 23 of 2014 fell in between the dates of March 14, 2014 and April 30, 2014. Alternatively, he may simply have been trying to support his patient. This Committee does not question the integrity of the people involved in this process, but can only determine that the papers submitted do not support the circumstances the Student-Appellant needed to establish to defer her exams.

It is clear that the Student-Appellant has been and may remain confused about much of what has transpired during the petition and appeal process. She has not raised arguments or submitted documentation in a timely manner throughout this process. At an earlier stage of the process she attempted to rely on a *Verification of Student Illness or Injury* form that concluded her impairment was “negligible,” which suggests that her understanding was that having a form in hand, regardless of what it said, was all that was required of her. Her three visits to the doctor to collect a form that she thought included the data the FAS wanted to see were made in good faith, but were not based on a clear understanding of the issues. The Division’s rule that a medical visit must be close in time to the exam deferred is reasonable. A doctor’s note may be furnished retroactively, but the gap in time between the visit to the doctor and the date of the exam cannot be remedied retroactively. As time passes each doctor’s visit is further and further in time from the time of the illness.

The student clearly had difficulty navigating the petition process and the support offered at Accessibility Services. The Faculty of Arts and Science and the University have promulgated guidelines, regulations, and Frequently Asked Questions features to better explain their policies to students. This Student-Appellant was not served well by the complexity of the accommodations services and policies. This Committee is aware that as the rules and policies around accommodations become more nuanced and specific, the burden on students increases. Nevertheless the Student-Appellant’s failure to provide reliable evidence, coupled with the fact that Accessibility Services is not supporting her petition, make it difficult for this Committee to accept her arguments.

The Student-Appellant acknowledges that her legal problems began at the beginning of the Winter, 2014 term, and that many of the other issues she identified were also present throughout the term. She reports that she considered withdrawing before the last day to withdraw without penalty. The Registrar of her Division advised her to do so. However the Student-Appellant explains that she did not want to allow her legal adversary to force her to abandon her studies nor could she afford to retake the course. It is unfortunate that the Student-Appellant had such a difficult term, but she cannot argue that her difficulties around exam time were unforeseen or were not present before the deadline for withdrawal. The decision to stay in school was unfortunate, especially since she the Student-Appellant did not follow up by taking the steps necessary to put accommodations in place. At this date it is impossible to tell whether any accommodations would have been warranted, but it is clear that the necessary documentation was not offered at the time, and cannot be reconstructed now.

IV. Conclusion

The role of the Academic Appeals Committee is to evaluate the decisions of the bodies it reviews. In this case the decision of the Academic Appeals Board of the FAS dated June 22, 2015 reasonably concluded that the Student-Appellant's medical documentation did not conform to the Faculty of Arts and Science's policy of asking that medical visits supporting petitions for exam deferral take place close in time to the date of the exam(s) in question. The Academic Appeals Board applied a tailored approach to this case, as it does for all cases according to its rules and regulations. However, this Committee recommends that the FAS make clear to students the criteria that are taken into consideration in determining whether a medical visit is sufficiently close in time to the relevant exam date in different cases. The Faculty has made the reasonable decision not to publish rigid time frames, however this Committee recommends that it give a more detailed analysis in its decisions so students can see how the rules were applied in their individual cases. In this case, although the Student-Appellant's discussion of multiple reasons for missing five exams during the month of April, 2014 were helpful in providing context to the Committee, they ultimately did not speak to the problem with her medical documentation, or the Division's reasonable objection to accepting that documentation. Therefore, the Academic Appeals Board's decision is upheld.