

UNIVERSITY OF TORONTOTHE GOVERNING COUNCILREPORT NUMBER 116 OF THE ACADEMIC APPEALS BOARDMarch 2nd, 1988

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a hearing on Wednesday, March 2nd, 1988 at 3:00 p.m., in the Falconer Room, Simcoe Hall, at which the following were present:

Professor J. B. Dunlop (In the Chair)
Ms. Rachel Barney
Professor C. Berger
Mrs. D. Hellebust
Professor F. A. Sherk

Ms. Irene Birrell, Secretary

In Attendance:

MSF appellant
Mr. Symon Zucker, counsel for the appellant
Dean A. R. Ten Cate, Faculty of Dentistry
Mr. Ian Blue, counsel for the Faculty

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

At a meeting on March 2nd, 1988, the Academic Appeals Board heard the appeal of *MSF* against a decision of the Academic Appeals Committee of the Faculty of Dentistry. She had failed Restorative Dentistry in her second year, and had also failed the supplemental evaluation. In accordance with the regulations then in force in the Faculty, she could not repeat the year and in consequence had been refused further registration.

(SEE REPORTS #113 + #114) The hearing on March 2nd was the third occasion on which the matter had been before the Board. On December 17th the Board had met to consider preliminary questions. On January 14th, 1988 it had, at the Faculty's request, referred the matter to the Academic Appeals Committee for further consideration. On March 9th the Board met in executive session and decided that the appeal should be allowed.

THE BACKGROUND

The original decision of the Academic Appeals Committee of the Faculty in August, 1987 had been to allow the appeal conditionally, permitting the appellant to begin repeating her second year. The appellant had presented the evidence of an ophthalmologist, Dr. Goldberg, who stated that the appellant suffered from a convergence disorder, correctible with appropriate lenses and exercises, which made it difficult for her to perform the work required. The appellant also presented evidence of a psychologist, Dr. Turrall, that she suffered "examination anxiety" caused in part by her vision difficulty.

Dean Ten Cate reported references in the appellant's file to lack of emotional control and doubted these were attributable to the vision difficulty. He requested that second assessments be obtained.

The Committee made an unusual decision. They granted the appeal conditionally, instructed the Faculty to obtain second opinions and provided that if these did not substantiate the assessments already in evidence, the appeal should be dismissed.

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It is difficult to understand the reasoning of the Committee. If they had reservations about the opinions already presented, based on the Dean's statement, one might have expected a reserved decision pending the second opinions. That they granted her appeal conditionally suggests they were favourably impressed by the evidence and wished to assist the appellant on an interim basis. But this is difficult to reconcile with a decision to dismiss the appeal, apparently automatically, unless the second opinions confirmed the first. One would have thought they would have wished to assess all the evidence once the second opinions had been obtained. Certainly that is what they should have done. In any event this decision, however well intentioned, set the stage for a distressing series of events that has lasted through most of the academic year.

When the second opinions came, that of the ophthalmologist, Dr. Kraft, confirmed Dr. Goldberg's. But the second psychologist, Dr. Whitney, disagreed with the first, concluding that dentistry was "probably an unlucky choice for this bright young woman."

The process of obtaining second opinions was not completed until some time in November, and the Dean wrote to the appellant on the 18th to say that the decision of the Academic Appeals Committee would be "applied as stated". This action, confirmed by the Committee's chairman, resulted in the appeal to the Board. The Board extended the appellant's right to attend classes pending the resolution of the appeal.

At the hearing on January 14th the Faculty conceded that the matter should have been dealt with further by the Academic Appeals Committee and consented to it being referred. Had the Board realized that the Committee would simply decide whether or not the opinion of the second psychologist, Dr. Whitney, confirmed the first opinion by Dr. Turrall, it would not have referred the case, thereby putting the appellant to additional expense and delay. It was already evident to the Board that the psychologists disagree. The Board, perhaps naively, believed that the Committee would consider and evaluate the two opinions (there was no question that Dr. Kraft's opinion confirmed that of Dr. Goldberg concerning the eye condition). Conflicting opinions are not necessarily of equal merit. The Committee's decision seemed to imply that they were, and that one nullified the other.

Immediately upon this decision, the Dean again told the appellant that her right to attend classes was terminated. The Board intervened again. The appellant having been granted the conditional right to continue was, in the Board's view, entitled to maintain that status until the validity of her claim, based on medical grounds, was properly adjudicated after an evaluation of the evidence to determine its relevance and cogency.

THE MARCH 2ND HEARING

At the hearing on March 2nd, the witnesses heard by the Board were three psychologists - Drs. Lazar, Turrall and Whitney- seven instructors, a member of the admissions staff of the Faculty and Dean Ten Cate. Notwithstanding the heavy emphasis on psychological evidence, the Board sees the main issue as medical. Did the appellant persuade the Board, on a balance of probabilities, that she suffered from a medical, specifically a visual, condition, which deprived her of a fair opportunity to show that she could perform adequately in Restorative Dentistry?

While the medical evidence was not presented orally to the Board, so that details of the relationship between the problem and the performance could not be explored, the fact remained that both ophthalmologists thought there was a relationship and that the correction of the appellant's eyesight might change things. The evidence also indicated that the correction had been substantially achieved. Thus, in the Board's view, the appellant had shown a handicap that was sufficiently serious to warrant giving her a second opportunity to do the work while not thus handicapped.

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The psychological question seems to have arisen in the following way. The Dean (and others, one can assume) believed that the appellant had an emotional problem that prevented her performing adequately under stress and, independently of the vision defect, accounted for her failure. The evidence of Dr. Turrall was thus offered by the appellant to link her anxiety to the visual problem. The Dean, doubting the adequacy of this explanation, requested the second opinions.

The evidence, in the Board's assessment, did not settle the question. Dr. Whitney thought dentistry was an unlucky choice for the appellant because of problems with observation of visual detail and visual-spatial manipulation. Even if this were so, and assuming the irrelevance of the convergence problem to these intellectual difficulties, the Board would be unable to conclude that, given corrected eyesight, she would nevertheless have failed.

But Dr. Lazar, called by the appellant to testify as to the validity of psychological testing in determining the suitability of a student to do the work of a dental student and to comment on Dr. Whitney's report, expressed the opinion that an intelligence test would not provide an adequate basis for an inference of the kind made by Dr. Whitney. He said that it was dangerous to attach significance to sub-scores obtained on sections of the test. Even the discrepancy between the appellant's score in the verbal portions (high average) and the non-verbal (low average) was an inadequate basis for reaching any relevant conclusion. He described Dr. Whitney's conclusion as a "giant leap of faith". The Board was inclined to agree. Even Dr. Whitney called it a leap of faith, admitting that the predictive capability of such tests was not statistically significant but, she said, tests used in American dental schools indicated a trend.

Dr. Turrall, who gave the same test, found a less marked discrepancy between the verbal and non-verbal scores, but also said that such results were inconclusive. The difference in score results, he said, could be explained in part by the practise of having done the test not long before, but also possibly by better rapport with the tester. His original opinion that her visual difficulty could have made the appellant anxious in respect of the work seemed wholly plausible.

Both psychologists gave the appellant a number of other tests but in the Board's view, no affirmative conclusion relevant to the outcome of the case could be based on these results. Nothing pointed to an extraordinary problem. Much of what was described in the way of nervousness and anxiety seemed, as Dr. Lazar said, not much more than what one would expect in the circumstances from an intelligent person. The conclusion that psychological problems accounted for the appellant's failure simply is not indicated.

The evidence of several of the instructors was to the effect that the appellant's marginal or unsatisfactory performance did not seem to them to be attributable to eyesight problems because, under close supervision, or at certain stages, she performed quite adequately. But none was prepared to say that the visual problem was irrelevant. Thus, while their evidence was of interest, it did not neutralize the medical evidence.

CONCLUSION

The Board's conclusion, then, is that the visual problem which made the appellant's work difficult is established to our satisfaction. It is correctible and has been corrected. It deprived the appellant of a fair opportunity to display her capabilities in Restorative Dentistry. Notwithstanding the rambling, and doubtless stressful investigation of her psychological makeup, there is no evidence to establish that her inability to do the work adequately was attributable entirely, or even in the main, to other factors.

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Thus she should be given the right to repeat the year, as she has been doing conditionally. The Board was informed that her work has been evaluated through the year, although the evaluations have not been disclosed to her or the Board. She should now be put on the same footing as her classmates. She will, of course, have to pay fees.

Appeal allowed.

Appearances:

The appellant: Ms. F. [redacted]
Mr. Symon Zucker, counsel for the appellant

For the Faculty: Dean A. E. Ten Cate
Mr. Ian Blue, counsel for the Faculty

Secretary
March 16th, 1988

Chairman