

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 182 OF THE ACADEMIC APPEALS COMMITTEE

August 23rd, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Tuesday, August 23rd, 1994 at 1:30 p.m. in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent at which the following were present:

Professor J. Bruce Dunlop, Chairman
Ms Peggy Haist
Professor John Mayhall
Professor Eric Mendelsohn
Ms Melanie Smith

In attendance:

Mr. E.A., the appellant
Ms Maureen Whelton, Downtown Legal Services, counsel for the appellant
Professor Don Perrier, Dean, Faculty of Pharmacy
Mr. Tim Pinos, Cassels, Brock & Blackwell, counsel for the Faculty

At a meeting on August 23rd, 1994 the Academic Appeals Committee heard the appeal of Mr. E.A. against a decision of the Appeals Committee of the Faculty of Pharmacy denying his request for relief from the Faculty's decision that he had failed the third year and was required to withdraw from the Faculty. He requested that he be allowed supplemental examinations in two subjects of the third year and, if successful, be permitted to proceed to fourth year, or that he have an opportunity to repeat the third year.

Although he had not fulfilled a requirement of the Faculty's process, not having filed a petition prior to the end of the term, his appeal was entertained by the Faculty. It was dismissed on July 22nd, 1994, and the appellant filed his notice of appeal to this Committee. The basis of his appeal was that a sleep disorder had made him extraordinarily tired and sleepy much of the time during the day and, along with the stress of his father's and his brother's health problems, made concentration, learning and writing examinations difficult.

The decision of the Committee is that the appeal must be dismissed.

BACKGROUND: THE RECORD

The appellant was an Ontario Scholar from Oshawa. He entered the Pharmacy program, a course so much in demand that one must be an Ontario Scholar or the equivalent to have any prospect of gaining admission. In 1990-91 he passed his first year with 63.7% as against a requirement of 60%. In second year, however, in 1991-92 he failed in two subjects out of nine,

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obtained 53.3% and was informed that he had failed his year. His appeal to the Faculty was based on evidence that family related stresses had interfered with his second year performance, causing him to fall below the level of which he was capable. The Faculty offered him permission to repeat second year. He appealed to this Committee in the summer of 1992¹.

SECOND YEAR APPEAL

By the time of this Committee's hearing, the appellant had taken one of his failed courses, Chemistry 240Y, in the summer term and had obtained a mark of 57%. This Committee noted that if the 57% had been achieved as his final grade in the course instead of the 31% on his transcript he would have had a sessional 58%. Dean Perrier agreed that the Faculty might have allowed him to proceed with such an average and this Committee did allow him to do so, further permitting him to carry the other subject he had failed (a practice contrary to Faculty policy). In its reasons for the decision this Committee observed that

Given the adverse personal circumstances which the appellants suffered through the second year and the evidence which we heard that the next academic year should proceed in a way which allows the appellant to focus on his academic work, the Committee has decided that he should be allowed to proceed to the third year.

This decision was unduly optimistic. In third year (1992-93) the appellant failed five of 10 courses, obtained 47% and was told he would have to re-apply to the Faculty to be allowed to repeat the year. An appeal was turned down at the Faculty level but pending his appeal to this Committee the appellant produced evidence of medical problems which led the Faculty to allow him to repeat and the appeal was settled without a hearing before this Committee.

THIRD YEAR REPEATED, 1993-94

The appellant's results repeating third year were three failed courses and an average of 52.2%.

ANALYSIS

The diagnosed disorder, or group of disorders was said to have improved, allowing the appellant to cope better with his other problems and his studies, but had still been responsible for depriving him of the ability to perform at his usual level. The complete diagnosis was put before this Committee in letters from the specialist in sleep disorders, most particularly in a letter dated August 22nd, 1994. He had conducted tests in May, 1994. Previous consultations conducted in the summer of 1993 had resulted in the appellant being treated with a course of drugs. Nothing else had been done about his condition during the 1993-94 academic year.

To persuade this Committee of the justification for relief it was necessary for the appellant to give us a basis to believe that the sleeping disorder probably did in fact interfere and an indication of the result that might have been expected under normal circumstances.

¹ See Report Number 154 of the Academic Appeals Committee

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CONCLUSION

The barrier to concluding that the appellant had been deprived of a reasonable learning opportunity, had his performance diminished by his own and his family's problems was the appellant's apparent attitude and action during the academic year 1993-94. He had given evidence that he took no steps to seek consideration from the Faculty until after he got the results of his year's work in the spring. He agreed with counsel for the Faculty that he had moved from the family home to reduce the stress, that he had heard no bad news concerning his family's health problems which were significantly improved and that he had thought his own situation under control with the medication. The appellant had concluded, notwithstanding a failure in a first term course, that he could have a successful year. This was why, he agreed, he had taken no earlier steps.

While the specialist who diagnosed the problem in his letter referred to appellant's "clinical history of excessive daytime sleepiness" which was "objectively supported by Multiple Sleep Latency Testing", the record of its effect on his studies, depended substantially on what the physician was told by the appellant:

from his description it has adversely influenced his ability to concentrate and study, most likely interfering with his academic pursuits.

This was not entirely independent evidence of the effect of the various factors during the academic year and was at variance with the appellant's own evidence.

Given the appellant's record, it was also difficult to conclude that his success under optimal conditions would have approached the probable.

The Committee expresses its appreciation to counsel for both parties for their assistance.

The appeal is dismissed.

Secretary

J. Bruce Dunlop
Chairman

September 7th, 1994