

## The Evaluation Appeal <sup>1</sup>

The appeal memo from Professor Kant, the report from your college's Academic Appeals Board, the reversal by the Director of Human Resources of its earlier position, and the worried e-mail from the President all lay open on your desk. Your hopes that this difficult case would just go away lay in shambles on the floor. Thinking back over the past six months you make a mental list of the key events. Last June the Department of Chemical Philosophy completed its evaluation of Associate Professor Atom Kant. Carefully done and well documented as always, the department's evaluation described what you knew it would, namely a mediocre performance in teaching, an abundance of excellent scholarly work and national level professional service that contrasted with sundry problems and deficiencies in departmental and campus service.

A week later, Associate Professor Kant appealed that evaluation. His appeal was based on two arguments. First he argued that he had achieved more nationally than any other scientific humanist of the college; and that this, plus his stellar scholarly record, indicates that he was performing at the level of a full professor on the national scene. But his jealous colleagues held his successes against him, and so they again gave him low marks in teaching and campus service in order to prevent him from being promoted to full professor. In turn this meant they were keeping him from earning the money his level of seniority and stature as a scholar warranted. And, given his health problems and obligations as a single parent with three children in college, he needed the money that the promotion would provide. Dr. Kant's second argument was different. He said that he had been suffering for debilitating skeletal muscular problems for the past two years. These problems had inhibited his ability to write comments on students' papers, and so to return assignments and essay tests to his students. He reported that he had approached the campus' Human Resources Office about ergonomic furniture and voice-recognition software, but had received neither as of June 30. Although, for what it is worth, these things have been ordered. The low evaluations in teaching, argued Kant, were a result of his physical disabilities. But, he argued, his colleagues, who knew well his situation because they saw him wearing braces on his shoulder and elbow, failed to take his medical condition into consideration when evaluating his teaching. He speculated in his appeal letter that his colleagues may be holding his disability against him, perhaps retaliating for the fact that he was not able to carry his weight in teaching and service because of that condition. He said that this was causing him great emotional distress.

You had followed the college's policy to the letter, and forwarded Dr. Kant's memo to your Academic Appeals Board. But since the Board did not meet during the summer, it could not take the case up until September. The Chair of the Board made contact with the Human Resources Office in early October and learned that Dr. Kant was not officially listed as having a work related disability for purposes of the Americans with Disabilities Act. The Director of HR said that ordering the ergonomic furniture and the voice-recognition software was simply a good faith gesture on the part of the institution, not an officially required accommodation. With this information in hand, the Appeals Board returned the case to you, as dean, with the recommendation that the departmental evaluation should not be changed. Happily the furniture and the software arrived in late October. You replied in writing to Dr. Kant that the evaluation would stand and you thought that the case was closed.

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<sup>1</sup>All characters, situations, and stories described here are fictional. No reference to actual persons, events, or institutions is intended or assumed. Drs. Peter and Noreen Facione developed and refined these hypothetical cases based on the experiences gained through their many decades of service as faculty, administrators, workshop presenters, and leadership consultants to colleges and universities throughout the nation.

But before Thanksgiving you received the memo from the HR Director saying that Dr. Kant officially had a medical condition that had been having an adverse impact on his ability to write for at least the past 24 months. You were further advised that in the future any evaluation of his performance should in no way be based on a reduction in the kind, quantity, or quality of work to be accomplished, since the appropriate and reasonable accommodations had been made. Within the week Dr. Kant wrote to the President saying that he was thinking about going to court because his faculty evaluation was unfair, because the dean would not change it even though the dean knew of the disabilities. He said he planned to recover salary he was losing due to evaluation sabotage and, further, to seek punitive damages against the University for having retaliated against him on the basis of his status as a disabled person. The e-mail from the President that informed you of all of this demanded both an explanation and immediate recommendations on how the situation could be “expeditiously and inexpensively resolved.”

**1. What are your options? What do you decide to do? What ethical, academic, and legal principles justify your decision at this point?**

Having discussed the matter with the President and the campus attorney, you set up a meeting with Dr. Kant, with whom you have generally had cordial conversations over the years. His demeanor in the meeting with you is professional and, indeed, optimistic. He feels that he is learning how to use the voice-activated software effectively and he expects that his colleagues will be more understanding of his condition now that it has been officially recognized by HR. Without saying that you are trying to move him off his plans to sue, you ask what he recommends be done to resolve his concerns. He proposes that you do two things. First, ask his colleagues to reconsider his evaluation in the light of his medical condition. And, second, award him a salary adjustment of \$15,000 due to his seniority and his world-class scholarly achievements. You both acknowledge that such an adjustment could result in hundreds of thousands of dollars of increased pay and retirement benefits over the years remaining until his retirement.

**2. Now that you know what Dr. Kant wants, what do you do? Why?**

You return the case to the department for reconsideration. Although future evaluations cannot reduce the work expectations, it seems reasonable to you that the faculty of the department might change their evaluation of past work now that the fact that Dr. Kant had an authentic medical disability, has come to light. The department agrees to deliberate and your hopes rise. But when the result comes back it reflects no change. The Chair of the department explains that the faculty based their original judgments on many things in addition to the problem with returning assignments late. In fact, the record shows that there were major problems with Dr. Kant’s teaching and faculty service long before the onset of the medical disability and that Dr. Kant’s performance was substantially the same after as it was before. For example, Dr. Kant had long record of failing to return students’ assignments and tests in a timely way, and that record goes back at least seven or eight years. As a result, the department is convinced that the university has nothing to fear from any legal action that Dr. Kant might bring. As to the question of salary, the Chair says that Dr. Kant’s salary while low given his seniority, is not unfair given the chronic problems that have been evident in his faculty service and teaching over a great many years.

While the department had been reconsidering the evaluation, you had undertaken a salary study to see where Dr. Kant’s salary fell relative to the other associate professors in his department and in related disciplines. Your first approach is to identify the year when Kant was hired and to project what his salary

would be today, had he received the average raise for each year. You notice that some years, although not many, Dr. Kant actually received a raise that was above the average. So you calculate what his salary would be today if he had received either the average raise or his actual raise, whichever was higher in each year. The first calculation would put his salary \$6100 higher than it now is. The second way of looking at it would put his current salary \$7800 higher than it now is. If you were to raise his salary by \$7800, this would place him solidly at the median of salaries for his rank and disciplinary area, although still below persons with comparable seniority, particularly since many of them had already achieved promotion to full professor and the resulting increase in pay that the promotion brings. It looks like it would take another \$5500 to equate his salary with those who have comparable seniority.

**3. You have the discretionary authority and the funding to adjust Dr. Kant's salary in any way that seems reasonable. What do you do plan to do? How do you plan to present your decisions or recommendations to Dr. Kant, the Chair, and the President? What academic, managerial, and ethical principles ground and explain your decision?**