[2012] AATA 483

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2011/2422 |
| Re | Andrew Singh |
|  | APPLICANT |
| And | Secretary, Department of Industry, Innovation, Science, Research and Tertiary Education |
|  | RESPONDENT |

# Decision

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| Tribunal | **Ms N Bell, Senior Member** |
| Date | **26 July 2012** |
| Place | **Sydney** |

The decision to not re-credit SLE to Mr Singh is set aside. The matter is remitted to the Respondent with a direction that it take no further action in respect of that decision.

.....[sgd]...................................................................

**Ms N Bell, Senior Member**

# catchwords

HIGHER EDUCATION - PRACTICE AND PROCEDURE - JURISDICTION - student enrolled in non-award courses - application for FEE-HELP - university did not receive application - decision set aside and remitted

# Legislation

Higher Education Support Act 2003 (Cth), ss 79-1, 104-1, 206-1

# Cases

SLE Medical Pty Ltd and Industry Research and Development Board (1988) 19 ALD 215

# REASONS FOR DECISION

**Ms N Bell, Senior Member**

**26 July 2012**

1. The history of this application is mired in error and misconception.
2. Mr Singh is a citizen of New Zealand. He qualified as a legal practitioner in New Zealand and, now residing in Australia, sought recognition as a legal practitioner in Australia. He was advised by the Victorian Council of Legal Education that in order to qualify for admission in Australia he must complete studies in Administrative Law, Constitutional Law, and Ethics and Professional Responsibility. Toward this end Mr Singh enrolled in and completed Constitutional Law and Ethics and Professional Conduct at the University of New England as a non-award student.
3. However, Mr Singh is unable to obtain a formal record of completion of these subjects because he remains a full-fee student and has not paid tuition fees. Mr Singh says that the reason he has not paid tuition fees is because he made an application, prior to the relevant census date, for “FEE-HELP” (a government funded student loan scheme) so that he might pay his fees over time through the taxation system. The University considered it had never received this application from Mr Singh and refused to treat him as a FEE-HELP student.
4. Mr Singh applied for review of the University’s decision of 20 June 2011 to not grant fee help. Section 104-1(1)(i)(ii) of the *Higher Education Support Act 2003* requires that an application for FEE-HELP be received before the census date for a unit of study. The University had no record of receipt of an application for FEE-HELP from Mr Singh prior to that date and refused to accept his application.
5. The Tribunal’s jurisdiction to review decisions made under the Act is conferred by section 206-1 of the Act. Decisions under section 104-1 are not included in section 206-1 amongst those that may be reviewed by this Tribunal. It follows that this Tribunal has no jurisdiction to review the University’s decision to not grant FEE-HELP to Mr Singh.
6. However, a decision was made by the University, not requested by Mr Singh, that does fall within this Tribunal’s jurisdiction. On 12 March 2010 the University made a decision to not re-credit SLE (student learning entitlement) for his two units of study. This decision was affirmed on 12 August 2010. That decision was purported to be made under section 79-1 which is identified as a reviewable decision in section 206-1.
7. The decision was, however, nonsensical because there is no evidence that Mr Singh ever applied for or received a SLE for the units he studied. The Secretary has asked that the decision be set aside and remitted with a direction that no further action be taken in respect of that decision. This unusual step was taken by the Tribunal in *SLE Medical Pty Ltd and Industry Research and Development Board* (1988) 19 ALD 215.
8. I note the direction of Senior Member Allen on 28 July 2011 that the application be amended to seek review of the decision to not re-credit SLE.
9. Mr Singh is not interested in and never sought a decision to re-credit SLE. His concern has always been to obtain FEE-HELP so that he may pay his tuition fees over time through the taxation system. It remains unclear why the University took it upon itself to make a decision it was never requested to make. That gratuitous and misconceived action has caused Mr Singh, the Tribunal and the Respondent considerable confusion, difficulty and time.
10. That difficulty was added to by the advice received by Mr Singh from the University Ombudsman in a letter dated 28 February 2011 in which the Ombudsman advised Mr Singh that he may appeal the University’s decision to not grant FEE-HELP to the Administrative Appeals Tribunal. That advice was wrong.
11. Were it the case that the Tribunal had jurisdiction to deal with the question of whether Mr Singh should have received FEE-HELP, that would involve an issue of fact concerning whether certain correspondence was sent to or received by the University. I have no occasion here to consider that issue. I note that Mr Singh was concerned that, in this contest of fact, his credit was being impugned. I can say that I have heard and read nothing that impugns his credit.

# Decision

1. The decision to not re-credit SLE to Mr Singh is set aside. The matter is remitted to the Respondent with a direction that it take no further action in respect of that decision.

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| I certify that the preceding 12 (twelve) paragraphs are a true copy of the reasons for the decision herein of |

....[sgd]....................................................................

Dated 26 July 2012

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| Dates of hearing | **18 January and 20 July 2012** |
| Applicant | **In person** |
| Solicitors for the Respondent | **Mr S Maundrell** |