

DECISION 22 - 079

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of the Examination Appeals Board of Leiden University
in the matter of
the appeal of [name], appellant
against
[name], in her capacity of Examiner, of the course unit [X], respondent

The course of the proceedings

On 10 January 2022, the appellant sat the resit of the interim examination of the [X] course unit.

In the decision of 31 January 2022 the appellant was informed that this examination was awarded an unsatisfactory grade (5.1 on a scale of 10).

In an email message of 17 February 2022, the appellant lodged an administrative appeal with the Examination Appeals Board against this decision

On 22 February 2022, the appellant added information to the appeal.

On 8 March 2022, the parties investigated whether an amicable settlement could be reached. No amicable settlement was reached.

The respondent submitted a letter of defence on 14 March 2022.

The appeal was considered on 6 April 2022 during a hearing of a chamber of the Examination Appeals Board. The appellant was present at the hearing. The respondent appeared in person, accompanied by [name], member of the Board of Examiners of the programme in [X].

On 6 April 2022, the Examination Appeals Board postponed the case until 4 May 2022 to give the parties a further opportunity to reach an amicable settlement.

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On 16 April 2022, the Examination Appeals Board was informed by the appellant that a second settlement attempt had not lead to the required result and that he did not withdraw his appeal.

Considerations

1 – Facts and circumstances

At the hearing, the appellant stated that he was awarded a satisfactory grade for his thesis and that, consequently, the course unit [X] is the final course unit that is still unfinished.

2 – The position of the respondent

The respondent adopted the view - in essence - that the circumstances argued by the appellant to assess the interim examination less strictly apply to all students. The online interim examination was sat by means of ANS software which has 'one-way navigation' so that it is not possible to return to a previous question after completing a question. The respondent stated that using ANS has become common in order to minimise the risk of fraud. The students had also been alerted by means of Brightspace prior to the interim examination that the interim examination would be sat by means of ANS. Furthermore, the respondent adopted the view that it was still necessary to observe corona measures, so that the resit of the interim examination took place online. The first-opportunity interim examination was sat in person, as this was permitted at the time in respect of corona measures. The fact that the resit of the interim examination took place one day after the deadline for the appellant to submit his thesis does not constitute a reason for the respondent to assess the interim examination less strictly. The date of the resit was announced well in time.

3 – The grounds for the appeal

The appellant adopted the position that he should be awarded a satisfactory grade for the interim examination. At the hearing, he referred to two questions from the interim examination for which he deems he is entitled to more points. The appellant argued in his letter of appeal that he holds it unjust that, due to the use of ANS, he could not return to earlier answers in the interim examination in order to adapt these at a later time. This was quite contrary to the first-opportunity interim examination that was sat in writing. He stated that he would have been awarded a satisfactory grade had he had the opportunity to review his replies at the end of the interim examination, given that the grade of 5.1 is quite close to the minimum requirement of 5.5 that he needs to complete the course unit successfully. Furthermore, the appellant stated that he was unpleasantly surprised that - contrary to what the Examiner had stated - the questions in the

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resit of the interim examination were different from those in the first-opportunity examination. Finally, the appellant stated that the date of the resit was very unfortunate for him as he had to submit his thesis one day before the resit and he was not aware that he could have obtained a delay of the deadline.

4 – Relevant legislation

As far as relevant, the Course and Examination Regulations (*Onderwijs- en Examenregeling*, “OER”) of the Master's Programme in [X] 2021-2022 state the following:

Article 4.0 Exceptions due to coronavirus measures

4.0.1 If as a result of coronavirus measures it is not possible to offer exams and examinations in the form and at the point in time set out in this regulation or in the Prospectus, changes will be announced by the authorised body in good time via Brightspace.

Article 4.3.5 of the Rules and Regulations (*Regels en Richtlijnen*) of the Board of Examiners of the Bachelor's Programme in [X] and the Master's Programmes in [X] and [X], states:

A student who still needs to complete one course of his/her degree programme may be granted one additional opportunity to take an examination by the Board of Examiners if no examination for this course is scheduled during the block concerned, the student has participated in the examination for the course before and the student has completed the bachelor's or master's thesis. The additional opportunity does not apply to bachelor's and master's theses.

5 – Considerations with regard to the dispute

In accordance with article 7.61, paragraph two, of the Higher Education and Academic Research Act (*Wet op het Hoger Onderwijs en Wetenschappelijk Onderzoek*; WHW), the Examination Appeals Board must consider whether the contested decision contravenes the law.

Assessing the knowledge and skills of an examinee or interim examinee is an authority vested exclusively in the Examiner charged with organising the examination or interim examination and assessing the result. The Examiner must observe the guidelines of the Board of Examiners pursuant to Article 7.12b, paragraph one, under b of the WHW. The Examination Appeals Board is merely allowed to review marginally, with a view to answering the question whether the Examiner was able to perform his contested assessment within reason and without acting contrary to any written rule or any principle of law.

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The Examination Appeals Board considers that it sees no indication that could lead to the conclusion that the assessment was performed contrary to the assessment framework. Unlike the appellant, the Examination Appeals Board holds that the appellant did not fail to pass the interim examination by a small margin as the gap was 0.4 points. The respondent decided correctly not to adapt the assessment that was performed based on the circumstances argued by the appellant. The Examination Appeals Board shares the view of the respondent that these circumstances applied to all students, so that the appellant was not treated differently from his fellow students. The respondent announced by means of Brightspace before the resit that ANS would be used in the interim examination and it was also stated on the front page of the interim examination.

At the hearing, the respondent indicated once again that now that the course unit [X] is the final course unit that is still unfinished, the appellant qualifies to use Article 4.3.4 of the R&R (final course unit rule). At the hearing, the respondent indicated that a resit can be arranged in the short term. During the hearing, the appellant stated his interest in this.

Since the Examination Appeals Board has not been informed of any other facts or circumstances that could lead to an alternative decision, the appeal must be held unfounded.

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The decision

The Examination Appeals Board of Leiden University

holds the appeal unfounded

in view of article 7.61 of the Higher Education and Academic Research Act.

Established by a chamber of the Examination Appeals Board, comprised of G. van Poppel, LL.M. (Chair) Dr A.M. Rademaker, Dr C.V. Weeda, J. Kuster, and J.J. Christiaanse BA (members), in the presence of the Secretary of the Examination Appeals Board, M.S.C.M. Stoop - van de Loo, LL.M.

G. van Poppel, LL.M.
Chair

M.S.C.M. Stoop - van de Loo, LL.M.
Secretary

Certified true copy,

Sent on: