

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #400 of the Academic Appeals Committee
November 15, 2018

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, October 24, 2018 at which the following members were present:

Professor Hamish Stewart, Senior Chair
Professor Andrea Sass-Kortsak, Faculty Governor
Ms. Susan Froom, Student Governor

Hearing Secretary:
Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. S.T. ("the Student")

For the Faculty of Arts and Science:

Professor Melanie Woodin, Associate Dean, Undergraduate Issues and Academic Planning
Mr. Thomas MacKay, Director, Faculty Governance & Curriculum Services

The Appeal

The Student appeals from a decision of the Academic Appeals Board of the Faculty of Arts and Science, dismissing his appeal from a decision of the Committee on Standing, dismissing his appeal from a decision of the Faculty which dismissed his petition for late withdrawal without academic penalty from CSC108, Winter 2017.

The appeal is allowed and the Student is granted late withdrawal without academic penalty.

Procedural Rulings

The Student requested a closed hearing on the basis that an open hearing might reveal certain personal financial details which he did not wish to become public. Your Chair dismissed this request. The financial details in question, though not very specific, do help to explain some aspects of the Student's situation during the Winter 2017 term. But they are for the most part irrelevant to your Committee's decision and are not revealed in this decision. Your Chair was in any event not satisfied

that the danger that these details might be revealed would rebut the presumption in favour of an open hearing.

The Student offered a piece of new evidence at the hearing. As noted below, your Chair received this evidence with the consent of the Faculty.

Overview of the Facts

The Student graduated from the University with an Honours BSc in 2009. In the Winter 2017 term, he returned to the University to pursue a second undergraduate degree and enrolled in Introduction to Computer Programming (CSC108H1S) Early in the term, he was diagnosed with a hernia. He had surgery to repair the hernia on February 22, 2017, during Reading Week, and resumed attending classes the following week. The applicable “drop date” for CSC108 was March 13, 2017. In late March and early April, the Student found that his “post-operative condition changes from manageable to an increasing discomfort and pain”. He wrote the examination for CSC108 in April 2017. It can be inferred that the Student performed very poorly on the examination because, despite having done very well on the term work, the Student failed the course.

In August 2017, the Student petitioned the Faculty for late withdrawal without academic penalty from CSC108. The petition was dismissed. The Student’s subsequent appeals to the Committee on Standing and to the Academic Appeals Board were dismissed. In its letter advising the Student of its decision, the Board stated:

You acknowledge that you received very clear advice from your doctors that you needed at least six weeks off from school and from work in order to recover from your operation. ... Your medical circumstances did not affect your mental state and decision-making capacities about your studies. You chose to remain in the course despite the medical advice that you received.

The letter to the Student states that its decision is “final.” That is true as far as proceedings within the Faculty were concerned, but the Student did have a further right of appeal to your Committee. The Policy on Academic Appeals Within Divisions, section 4.i, clearly states:

Divisional processes should require that any student whose appeal has been denied must be advised of a further right to appeal of the decision of the divisional appeals committee to the Academic Appeals Committee of the Academic Board of Governing Council. The existence of this right of appeal should be clearly communicated, in writing to students for whom the appeal was denied at the divisional level.

Accordingly, the Board’s letter to the Student should have advised him of his right to appeal to your Committee. Your Committee trusts that this oversight will not be repeated.

The Student appeals to your Committee.

Decision

The Student’s written and oral submissions emphasized the ways in which his post-operative condition, particularly the unexpected worsening of his condition in late March and early April 2017,

affected his performance on the final examination. The Student appeared to be under the impression that the Faculty did not accept this explanation for his failure. That is not the case. The Faculty has never contested the fact that the Student's medical condition affected his performance on the final examination.

On the other hand, the Faculty appears to have been operating under a misapprehension about the Student's condition following the surgery. It is unclear on what basis the Board concluded that the Student had been advised to take six weeks off following the surgery. There is nothing in the material received by your Committee to support that conclusion. (There is a retrospective diagnosis from one of the Student's family doctors that he was "significantly impaired" between February 2 and April 30, 2017, but your Committee notes that the Student's surgeon, again retrospectively, diagnoses him as "severely" impaired from February 22 to March 8, and only "moderately" impaired thereafter. The surgeon nowhere states that he advised the Student to take six weeks off.) At the hearing, the Student provided your Committee with a hospital brochure titled "Instructions for Care Following Hernia Repair" that he was given following the surgery. This brochure should have been introduced into the proceedings at a much earlier stage; however, as the Faculty did not object, your Chair admitted it. The brochure does not come close to suggesting that a patient should take six weeks off following hernia repair; to the contrary, it advises that the patient can "resume light activity" as soon as the day following the surgery. It advises that the patient "should not lift anything heavier than 5 to 10 pounds for 4 to 6 weeks" and should return for a follow-up appointment in 6 weeks. The inference your Committee draws from this brochure is that the Student and his surgeon reasonably expected that he would be able to resume his studies following Reading Week—as indeed he did. This is not a case where the Student chose to proceed with course work in the face of medical advice to the contrary; it is a case where the Student's medical condition, manageable before the drop date, unexpectedly worsened after the drop date.

A student who becomes unexpectedly ill after the "drop date" or before or during an examination should contact his or her college Registrar to work out an accommodation, if possible and appropriate. So, when the Student's condition unexpectedly worsened in late March or early April, he should have contacted the Woodsworth College Registrar. (At the hearing, the Student made a number of complaints about his Registrar's office. Your Committee is not in a position to decide whether those complaints were justified in his case, but observes that, in its experience, the University's registrars normally provide efficient, professional, and compassionate services.) At that point, a number of options could have been explored: for example, a deferred examination, an opportunity to rewrite the examination, or a timely petition for late withdrawal without academic penalty. However, your Committee finds that this is one of those rare cases where the Student's ability to make decisions about how to handle his situation was impaired by an unexpected deterioration in his medical condition, such that he was unable to properly consider his options. This is not one of those cases where the Faculty's entirely justified concern about a student "rolling the dice" by choosing to write an examination, believing that they later have an option not seek late withdrawal, applies. His failure to seek timely advice from his Registrar is understandable and the remedy he would likely have been granted had he sought it at the time is granted now.