



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 24-04-WA**

**BY,**

Salary Overpayment  
Waiver Matter

Debt ID: Q0230044711

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent has filed an overpayment waiver request seeking a waiver of a \$2,542.41 debt identified by Debt ID Q0230044711. In support of the waiver request, Respondent has provided a copy of the debt letter, emails, various personnel forms, and a medical diagnosis. With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I deny the waiver request.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (OHA) which, thereby, exercises authority and jurisdiction on behalf of the Secretary of Education to waive claims of the United States against a former or current employee of the Department.<sup>1</sup> The undersigned is the authorized Waiver Official who has been assigned this matter by OHA. Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

DISCUSSION

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>2</sup> Among other things, that notice must explain the "origin, nature and amount of the overpayment."<sup>3</sup> It must also include Government records on which the overpayment

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<sup>1</sup> The Department's policy is set forth in its Handbook for Processing Salary Overpayments. U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

<sup>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> *Id.* § 32.3(a).

determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.<sup>4</sup>

In this case, the debt letter asserts that the “overpayment was a result of an adjustment for an award processed by your personnel office for pay period(s) 202325.”<sup>5</sup> According to Respondent, the debt arose because the Department processed a performance award near the end of calendar year 2023, then determined payment of that award was in error and issued the debt letter in January 2024.

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) the fault standard: whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) the equity standard: whether Respondent can show that it is against equity and good conscience for the Federal Government to recover the overpayment.<sup>6</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>7</sup> An employee fails the fault standard where, based on the employee’s circumstances including experience with the federal government, the employee has records at his or her disposal that would indicate a salary overpayment.<sup>8</sup> Federal employees “have a duty to review and react to errors that are clear on the face of a leave and earnings statement.”<sup>9</sup>

Although the record contains emails between Respondent and various Department staff, including Respondent’s supervisor, nothing in the record provides a clear understanding of why the award was found to be an error and rescinded. One email, dated January 24, 2023, indicates that “[t]he plan was established outside of the rating period and inconsistent with policy.” However, nothing in the record explains how a determination made in January 2023 would affect an award processed during pay period 25 in 2023. In these circumstances, I find that Respondent meets the fault standard.

I now turn to the question of whether Respondent meets the equity standard. An employee must repay a valid debt unless doing so would be inequitable.<sup>10</sup> There are no rigid rules for determining whether repayment is equitable, but factors considered generally include: whether the debt is substantial; whether repayment would be unconscionable in the Respondent’s unique circumstances; whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; and whether collection of the debt would impose an undue financial burden.<sup>11</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>12</sup> The nature of the debt is not punitive; the debt is merely the difference between the

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<sup>4</sup> *Id.* § 32.3(g).

<sup>5</sup> Debt Letter at 1.

<sup>6</sup> 5 U.S.C. §§ 5584(a), (b)(1); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3–5.

<sup>7</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* (and cases cited).

<sup>10</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

<sup>11</sup> *In re J*, Dkt. No. 17-04-WA, U.S. Dep’t of Educ. (Mar. 23, 2017) at 5 (citing *In re David*, Dkt. No. 05-22-WA).

<sup>12</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

amount paid by the Department and the amount the Department should have paid to Respondent in each pay period.

Respondent's primary argument that repayment would be inequitable is that Respondent is "presently ongoing both medical and financial issues following a recent diagnosis" with a serious condition.<sup>13</sup> Respondent has provided a medical report corroborating this diagnosis. However, Respondent does not make any showing of personal finances to connect the dots between the medical issues and Respondent's inability to repay the debt.

In past cases, waiver officials have held, "[t]here is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not tantamount to showing a financial burden such that the equities call for a waiver."<sup>14</sup> Respondent has not demonstrated how Respondent's medical hardship makes repayment of the debt inequitable. Therefore, I find that Respondent does not meet the equity standard.

Because Respondent has not met equity standard, I will deny the waiver request. This decision constitutes a final agency action.

I note that the majority of Respondent's assertions in the waiver request challenge the validity of the debt. Respondent states, "I refute the agency claim of a debt, since I in fact earned my performance bonus and received the above-mentioned rating pursuant to" the applicable policy.<sup>15</sup> I have no authority to consider the validity of the debt in the context of a waiver request. Under 34 C.F.R. § 32.6(b), an employee who has requested a waiver under § 32.4(b) may request a pre-offset hearing within 10 days of receipt of a decision denying that waiver. Therefore, if Respondent wishes to challenge the validity of the debt, Respondent may request a pre-offset hearing within 10 days of receipt of this decision.

#### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$2,542.41 debt to the United States Department of Education captioned Debt ID Q0230044711 is **HEREBY DENIED**.

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Charles S. Yordy III  
Waiver Official

Dated: February 27, 2024

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<sup>13</sup> Waiver Request at 1.

<sup>14</sup> *In re E*, Dkt. No. 15-07-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep't of Educ. (July 11, 2012) at 9).

<sup>15</sup> Waiver Request at 1.