



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 24-05-WA

RJ,

Salary Overpayment
Waiver Matter

Debt ID: 40231273217

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent has filed an overpayment waiver request seeking a waiver of a \$1,870.70 debt identified by Debt ID 40231273217. In support of the waiver request, Respondent has provided a copy of the debt letter, emails, and personnel forms. 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.¹ 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.² Among other things, that notice must explain the "origin, nature and amount of the overpayment."³ It must also include Government records on which the overpayment

¹ 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).

² 34 C.F.R. § 32.3.

³ *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.⁴

In this case, the debt letter asserts that the “overpayment was a result of a correction to a personnel action that was processed by your agency” for 26 pay periods spanning calendar years 2023 and 2024.⁵ According to Respondent, the debt arose because the Department entered two different pay rates on the same day. The first entry was above the salary cap set by Congress. The second entry conformed to the pay cap. However, the Department thereafter paid Respondent at the higher, erroneous rate, and the error was not discovered for a year, resulting in the overpayment of salary.

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.⁶

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.⁷ 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.⁸ Federal employees “have a duty to review and react to errors that are clear on the face of a leave and earnings statement.”⁹

Respondent asserts that other employees are paid above the salary cap, so “I had no reason to believe anything was amiss or I was being overpaid.”¹⁰ Respondent also states the “overpayment was completely outside my control, outside my knowledge and as a result of both human and systemic error on the part of the Government.”¹¹ However, Respondent also asserts that “[w]e told HR about the issue[s] in March of last year.”¹² The extent of Respondent’s knowledge of the overpayment is not clear in the record. It appears likely that Respondent did not and should not have known that at least a portion of the overpaid salary was made erroneously. I conclude that Respondent meets the fault standard for at least part of the overpayment.

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.¹³ 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

⁴ *Id.* § 32.3(g).

⁵ Debt Letter at 1.

⁶ 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.

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

⁸ *Id.* at 5.

⁹ *Id.* (and cases cited).

¹⁰ Waiver Request at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

based on the overpayment; and whether collection of the debt would impose an undue financial burden.¹⁴ The general rule requires the employee to repay the debt unless doing so would be inequitable.¹⁵ The nature of the debt is not punitive; the debt is merely the difference between the amount paid by the Department and the amount the Department should have paid to Respondent in each pay period.

Respondent's sole argument that repayment would be inequitable is that "I spent the money in good faith and determining a way to pay it back is not in good conscience."¹⁶ 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."¹⁷ Respondent has not demonstrated any hardship or other circumstance that would make 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.¹⁸

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$1,870.70 debt to the United States Department of Education captioned Debt ID 40231273217 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: March 1, 2024

¹⁴ *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).

¹⁵ *In re Sarah*, Dkt. No. 11-07-WA at 2-3.

¹⁶ Waiver Request at 1.

¹⁷ *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).

¹⁸ 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.