



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 22-43-WA**

**GD,**

Salary Overpayment  
Waiver Matter

Debt ID: 21931808889

Respondent.

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**DECISION GRANTING WAIVER**

Respondent has filed a request for a waiver of a \$4,642.73 debt identified by Debt ID 21931808889. According to Respondent, the debt was incurred as a result of the U.S. Department of Education (the Department) canceling a career ladder promotion.

In support of the waiver request, Respondent has filed a brief and supporting exhibits including a copy of the debt letter. With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I find that Respondent has met the burden to justify granting a waiver of the debt.

**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.

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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).

## 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 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 a change to pay rates” for 10 listed pay periods.<sup>5</sup> According to Respondent, the debt arose because the Department erroneously processed a career ladder promotion when Respondent was not eligible for such a promotion.<sup>6</sup> Therefore, the Department subsequently canceled the promotion and now seeks to recover the difference in pay between Respondent’s original grade and step and the promoted grade and step during the pay periods in question.

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>7</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>8</sup> In this case, Respondent asserts that Respondent had “no reason to recognize this as an erroneous payment.”<sup>9</sup> Respondent also indicates that the Department provided specific, incorrect advice that Respondent’s position was eligible for career ladder promotions. The Department provided this advice both verbally and by sending to Respondent an inapplicable position description. Based on Respondent’s representations, I find that Respondent satisfies the fault standard.

Second, I turn to 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>

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<sup>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> *Id.* § 32.3(a).

<sup>4</sup> *Id.* § 32.3(g).

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

<sup>6</sup> Waiver Request at 1.

<sup>7</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>8</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>9</sup> Waiver Request at 2.

<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.

In this case, Respondent requests a waiver because, among other things, repayment would constitute “a significant financial impact as well as significant hardship to myself and my family.”<sup>13</sup> Respondent indicates that Respondent obtained a home loan based on the salary received after the Department erroneously processed the career ladder promotion.<sup>14</sup> Respondent has also provided documentation showing the burden of repaying the debt based on personal and family medical bills, student and other loan payments, and costs incurred by caring for Respondent’s grandmother. Based on past decisions of the Department, I find that Respondent has made a showing that repayment of the debt would be an unconscionable burden.<sup>15</sup>

Because Respondent has satisfied both the fault and equity standards, I grant the requested waiver. This decision constitutes a final agency action.<sup>16</sup>

### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent’s request for waiver of the \$4,642.73 debt to the United States Department of Education captioned Debt ID 21931808889 is **HEREBY GRANTED.**

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Charles S. Yordy III  
Waiver Official

Dated: September 15, 2022

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<sup>13</sup> Waiver Request at 2.

<sup>14</sup> *Id.*

<sup>15</sup> See *In re J*, Dkt. No. 16-27-WA, U.S. Dep’t of Educ. (July 29, 2016) at 8 (finding a combination of financial burdens to be a “significant factor” in favor of granting a waiver); *In re A*, Dkt. No. 15-43-WA, U.S. Dep’t of Educ. (Sept. 4, 2015) at 5 (noting that financially providing for a family member is a factor in finding that repayment of a debt would be so burdensome as to be inequitable).

<sup>16</sup> 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.