



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 22-55-WA**

FA,

Salary Overpayment  
Waiver Matter

Debt ID: 22631841110

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent has filed a request for a waiver of a \$2,812.32 debt identified by Debt ID 22631841110. In support of the waiver request, Respondent provided 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 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 a correction to a personnel action that was processed by your agency” for 18 listed pay periods.<sup>5</sup> According to Respondent, the debt arose because Respondent received a pay increase for which Respondent was ineligible as a Schedule C appointee.<sup>6</sup> Thereafter, the Department “removed the award” and the subsequent debt letter was issued.

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, I agree with Respondent’s assertion that Respondent did not have any specialized knowledge that Respondent was not eligible to receive the award in question. Indeed, Respondent indicates that Respondent reasonably relied on the Department’s human resources personnel who “approved and processed the increase” from which Respondent might conclude Respondent “qualified for the award.” In these circumstances, 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>9</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>10</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>11</sup> 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 requests a waiver because Respondent is “the primary earner in my household” and supports “my 2-year-old daughter and my mother-in-law.” However, Respondent has not presented evidence showing with specificity that repayment of the debt would be an inequitable burden. The mere assertion of financial hardship without sufficient supporting evidence is insufficient to demonstrate that repayment of a debt would be inequitable.<sup>12</sup> In past cases, waiver

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<sup>4</sup> *Id.* § 32.3(g).

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

<sup>6</sup> Waiver Request.

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

<sup>10</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>11</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

<sup>12</sup> *In re RB*, Dkt. No. 16-36-WA, U.S. Dep’t of Educ. (Sept. 16, 2016) at 3.

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>13</sup> Respondent has not demonstrated any specific hardship or other circumstance that would make repayment of the debt inequitable.

Because Respondent has not satisfied both the fault and equity standards, I deny the requested waiver. This decision constitutes a final agency action.<sup>14</sup>

### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent’s request for waiver of the \$2,812.32 debt to the United States Department of Education captioned Debt ID 22631841110 is **HEREBY DENIED**.

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Charles S. Yordy III  
Waiver Official

Dated: January 4, 2023

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<sup>13</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>14</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.