



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 24-10-WA

HN,

Salary Overpayment
Waiver Matter

Debt ID: 40231160493

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent has filed an overpayment waiver request seeking a waiver of a \$1,332.50 debt identified by Debt ID 40231160493. In support of the waiver request, Respondent has provided a copy of the debt letter, emails, personnel forms, and departmental policy documents. 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 reads 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 Department has not provided a clear understanding of why the debt was incurred “other than that it was an administrative oversight.”⁶ However, Respondent notes that Respondent’s salary is “significantly higher than the GS-15, Step 10” and speculates that this pay rate is the basis of the overpayment. A January 5, 2024, email submitted by Respondent shows that Human Resources staff explained to Respondent that the overpayment was incurred because Respondent’s salary exceeds the legal maximum set by Federal Student Aid policy and Office of Personnel Management regulations.

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.⁷

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.⁸ 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.⁹ Federal employees “have a duty to review and react to errors that are clear on the face of a leave and earnings statement.”¹⁰

Although Respondent is now aware of the overpayment, there is no evidence that Respondent should have been aware of the overpayment prior to the January 5, 2024, email. I find no evidence in the record that Respondent knew or should have known about the overpayment prior to it occurring. Accordingly, I find that Respondent satisfies 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.¹¹ 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.¹² The nature of the debt is not punitive; the debt is merely the difference between the

⁴ *Id.* § 32.3(g).

⁵ Debt Letter at 1.

⁶ Waiver Request at 1.

⁷ 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.

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

⁹ *Id.* at 5.

¹⁰ *Id.* (and cases cited).

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

¹² *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).

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

Respondent indicates that the overpayment was due to an oversight by Human Resources. As such, Respondent asserts that a mistake made by Human Resources “should not penalize me.”¹³ Respondent also submits FSA policy documents to support Respondent’s assertion that FSA has the authority to set any salary it wishes. As described above, repayment is not a penalty, but a correction to recover funds to which an employee was not entitled in the first place. Respondent has not demonstrated any hardship or other circumstance that would make repayment of the debt inequitable. Assertions that the debt is not valid, because FSA could and should have set Respondent’s salary above the maximum indicated by Human Resources, are not relevant to this matter because I do not have the authority to rule a debt invalid in a waiver proceeding. Such an argument is properly made in the context of a pre-offset hearing.

Because Respondent has not met the equity standard, I will deny the waiver request. This decision constitutes a final agency action.¹⁴

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent’s request for waiver of the \$1,332.50 debt to the United States Department of Education captioned Debt ID 40231160493 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: April 1, 2024

¹³ Waiver Request at 1.

¹⁴ 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.