



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4616

TELEPHONE (202) 245-8300

FACSIMILE (202) 245-6931

In the Matter of

B,

Respondent.

Docket No. 17-67-WA
Debt ID 73111590579

Waiver Proceeding

DECISION GRANTING WAIVER

This decision concerns a notice of overpayment of salary to Respondent, captioned Debt ID 73111590579, citing a gross debt of **\$1,163.99**. The bill for collection states cryptically that Respondent received a salary overpayment due to “a correction to a personnel action that was processed by your agency,” but fails to provide any specific details about the “personnel action.” According to Respondent, her understanding is that the debt arose because ED personnel processed a grade increase using an incorrect duty station.

On July 5, 2018, I issued an order governing proceedings which required, among other things, that the Department of Education and Department of the Interior (ED/DOI) file the complete record on which the overpayment determination was made. I have not received the required filings or any other response from ED/DOI.

Based on the following analysis, I grant 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. 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

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment.¹ The person seeking the waiver bears the burden of demonstrating that he or she meets both factors.²

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.³ Among other things, that notice must explain the “origin, nature and amount of the overpayment.”⁴ 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.⁵

In this case, Respondent argues persuasively that she had no knowledge of the debt when it accrued as the circumstances did not warrant her inquiry. ED/DOI presents no conflicting evidence. Therefore, I find that Respondent satisfies the first factor.

Regarding the second factor, Respondent argues that it would be unconscionable to collect the debt due to her financial hardship. She indicates she is the single mother of an autistic child. After being laid off, she exhausted her savings during her job search at age 54. Even after obtaining employment with ED, Respondent remained underemployed and went into debt due to a marital separation and the out-of-pocket cost of caring for her son that is not covered by insurance. Her itemized monthly expenses total approximately \$3,521, which includes only minimum payments on credit card debt. Respondent’s employment circumstances, household expenses and family care obligations all fit squarely within the criteria to obtain a waiver.⁶ Therefore, Respondent satisfies the second factor.

I also note that ED/DOI has not demonstrated that Respondent received proper notice of the debts. ED/DOI has failed to file evidence that it provided such notice and has not filed anything in response to my order governing proceedings.

Based on the above-analysis, I grant Respondent’s waiver request.

¹ 5 U.S.C. § 5584(a) (2012); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3, 5.

² *E.g.*, *In re E*, Dkt. No. 15-7-WA, U.S. Dep’t of Educ. (Mar. 31, 2015) at 6–7; *In re Robin*, Dkt. No. 07-114-WA, U.S. Dep’t of Educ. (Aug. 4, 2008) at 3.

³ 34 C.F.R. § 32.3.

⁴ *Id.* § 32.3(a).

⁵ *Id.* § 32.3(g).

⁶ *E.g. In re J*, Dkt. No. 17-04-WA, U.S. Dep’t of Educ. (Mar. 23, 2017), at 5; *In re D*, Dkt. No. 17-09-WA, U.S. Dep’t of Educ. (Jul. 13, 2017), at 5 (citing *In re J.*, Dkt. No. 14-12-WA, U.S. Dep’t of Educ. (Sept. 21, 2015), at 4).

ORDER

Pursuant to the authority at 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the debt to the United States Department of Education captioned Debt ID 73111590579 is **GRANTED** in the entire gross amount of **\$1,163.99**. Any sums already collected to satisfy these debts will be refunded to Respondent immediately.

So ordered this 16th day of August 2018.

Charles S. Yordy III
Waiver Official