



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS  
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In the Matter of

C,

**Docket No. 18-5-WA, et al.**

Debt ID 80161277578

Debt ID 80441277578

Waiver Proceedings

Respondent.

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**DECISION GRANTING WAIVERS**

This decision concerns two notices of overpayments of salary to Respondent. The first overpayment is in the gross amount of **\$20,876.80** and labeled as Debt ID 80161277578. The debt letter provided only that the reason for overpayment “was a correction to personnel action.” According to Respondent, the debt arose because she was hired under a special provision setting her grade and step at GS-13 step 7, but she was told a year and a half later that her grade was erroneous during that period.

The second overpayment is in the gross amount of **\$228.00** and labeled as Debt ID 80441277578. The debt letter provided only that the reason for overpayment “was a correction to a personnel action” that was “a thrift savings transaction.” This description significantly differs from the itemized attachment showing the pay code as “INDV CASH AWARD RTG BASED.” The itemized sheet corresponds to Respondent’s understanding that the debt arose from a cash award scaled to her grade and step which, based on the previous overpayment action, was reduced.

Based on the following analysis, I will grant the waivers.<sup>1</sup>

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<sup>1</sup> The Office of Hearings and Appeals reassigned this waiver case from Greer Armandroff to me on July 10, 2018. I discovered a complete record, including all submissions permitted by Ms. Armandroff in her preliminary order. After consideration of that record, I will proceed with issuance of this final decision.

## 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.<sup>2</sup> 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.<sup>3</sup> It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”<sup>4</sup> The person seeking a waiver bears the burden of proof; failure to demonstrate both factors is grounds for denial of a waiver claim.<sup>5</sup> When requesting a waiver, the debtor is expected to: (1) explain the circumstances of the overpayment; (2) state why a waiver should be granted; (3) indicate what steps, if any, the debtor took to bring the matter to the attention of the appropriate official or supervisor and the agency’s response; and (4) identify all the facts and documents that support the debtor’s position that a waiver should be granted.<sup>6</sup>

Respondent argues that she accepted an apparently-valid job offer from the agency at a certain grade and step. She is also in possession of paperwork showing that her appointment at the GS-13 step 7 level was approved by multiple officials in her agency. ED makes no assertion that Respondent contributed to the circumstances resulting in overpayments. I find that Respondent satisfies the first factor.

The second factor requires a showing that collection of the debt would go against equity and good conscience. Respondent argues that repayment of the debt would create a hardship because she is the major provider for her household, including her retired husband. She also indicates that repayment of her debt along with the lowering of her salary creates a burden, especially because she is targeting a retirement date in the next two years. Finally, she argues that she does not understand the nature of the debt. She requested a copy of the audit findings on

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<sup>2</sup> Respondent also explicitly contests the validity of the debt. However, based on the favorable outcome of this proceeding, I will not transfer this case to an Administrative Law Judge for a pre-offset hearing. The issue of whether Respondent’s grade and step should be lowered is not at issue in overpayment proceedings and must be taken up through whatever grievance and personnel channels are available.

<sup>3</sup> 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.

<sup>4</sup> *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep’t of Educ. (Oct. 24, 2013) at 4; *In re Carolyn*, Dkt. No. 11-02-WA, U.S. Dep’t of Educ. (Aug. 11, 2011) at 4.

<sup>5</sup> *E.g.*, *In re E*, Dkt. No. 15-07-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.

<sup>6</sup> *In re E*, Dkt. No. 15-07-WA at 6–7.

which ED based her reduction of salary, but her request was refused. She does not agree that the lowering of her salary is justified.

I find that equity and good conscience require approval of Respondent's waiver requests. First, commencement of repayments would compound the financial burden created for Respondent by having her salary significantly reduced after a year and a half of reliance upon it, especially as she maintains a standard of living for her and her retired husband.<sup>7</sup> Second, the record contains no justification for the reduction of Respondent's salary or explanation of how her new salary was calculated. I see no evidence that the Department satisfied its obligation to provide Respondent with proper notice of the debt under 34 C.F.R. § 32.3.<sup>8</sup> Without such notice Respondent cannot adequately craft a waiver request, and it is inequitable to charge Respondent with repayment under these circumstances.

Accordingly, I will grant Respondent's requests for waivers.

#### ORDER

Pursuant to the authority of 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the debts to the United States Department of Education in the gross amounts of **\$20,876.80** and **\$228.00** are **HEREBY GRANTED**.

So ordered this 26th day of July 2018.

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Charles S. Yordy III  
Waiver Official

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<sup>7</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>8</sup> Among other things, notice of the debt must state the origin and nature of the overpayment. 34 C.F.R. § 32.3(a).