



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

Docket No. 18-26-WA

K,

Debt ID 81421237316

Waiver Proceeding

Respondent.

DECISION DENYING WAIVER

This decision concerns a notice of overpayment of salary to Respondent in the gross amount of **\$428.00**. The debt letter provided only that the reason for overpayment “was a correction to personnel action.” According to Respondent, the debt arose because he was both demoted a grade and was denied a within-grade step increase. An SF-50 for employee corroborates that evaluation, showing a personnel action on February 3, 2018, demoting Respondent from 14 step 1 to 13 step 3 for “failure to satisfactorily complete probationary period for supervisory (or managerial) position.”

Based on the following analysis, I will 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. 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 It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”² The person seeking a waiver bears the burden of proof; failure to demonstrate both factors is grounds for denial of a waiver claim.³ 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.⁴

Regarding the first factor, Respondent argues that the debt was the result of an administrative error that he had no cause to recognize. However, regarding the second factor, Respondent argues only that repayment would result in a hardship because the overpaid salary was already used to pay down debts.

“There 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.”⁵ Respondent does not demonstrate with specificity how repayment would constitute not only a hardship, but one so severe that it would be inequitable to recover the debt. In the absence of such a showing, Respondent does not satisfy the second factor and there is no ground for granting a waiver. Accordingly, Respondent’s request for a waiver is denied. This decision constitutes a final agency action.

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 **\$428.00** is **HEREBY DENIED**.

So ordered this 26th day of July 2018.

Charles S. Yordy III
Waiver Official

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 *In re Danea*, 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.

³ 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.

⁴ *In re E*, Dkt. No. 15-07-WA at 6–7.

⁵ *In the Matter of 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).