



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 18-40-WA

D,

Waiver Proceedings
Debt ID Q1981276818

Respondent.

DECISION DENYING WAIVER REQUEST

The Office of Hearings and Appeals (OHA) received a request for a waiver of a debt from Respondent, a U.S. Department of Education (Department) employee, in the above-captioned proceedings. On July 24, 2018, the matter was assigned to me as waiver official. Respondent's waiver request came in response to a notice of a debt resulting from an overpayment of salary to Respondent in the total amount of **\$266.82**. This overpayment resulted from a failure to timely change her duty station when she relocated, resulting in her being paid at a higher locality rate for one pay period.

On July 25, 2018, I sent an Order Governing Proceedings via electronic mail in response to Respondent's waiver request. That same day, Respondent filed a sworn statement with supporting documentation. On August 6, 2018, I sent an Order extending an opportunity to Respondent to supplement the file with any other documentation that she wished to file. That Order stated that if Respondent wished to submit any further documentation in support of her waiver request, she needed to do so by August 21, 2018 and at that point, I would "close the file and weigh the evidence presented to determine if Respondent has shown that a waiver is warranted in this matter."

Respondent did not file any additional information in response to the August 6 Order. Having reviewed the submitted information, I conclude that Respondent has failed to meet her burden of showing she is without "fault," as the term is used in these proceedings, for the overpayment resulting from the untimely change in her duty station designation. Accordingly, Respondent's request for a waiver is denied.

In a waiver proceeding, the Respondent does not challenge¹ the validity or amount of the debt, but rather argues that she should not be required to repay the debt because of equitable

¹ Respondent may challenge the validity or amount of the debt or argue that an involuntary repayment schedule imposed by the Department will cause "extreme financial hardship" in a

considerations as well as because there is no indication of fraud, misrepresentation, fault, or lack of good faith by Respondent or anyone else having an interest in obtaining the waiver. When requesting a waiver, the Respondent 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. This decision constitutes a final agency decision.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to OHA,² which, thereby, exercises waiver authority and jurisdiction on behalf of the Secretary of Education to waive³ claims of the United States against a former or current employee of the Department.⁴ 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.

PROCEDURAL HISTORY

In June 2018, Respondent was transferred from New York to Florida. On May 23, 2018, Respondent notified the Department's Office of Human Resources (OHR) of the move, which was to become effective June 10, 2018. Despite assurances from OHR that the transfer was processed, on June 29, 2018, Respondent examined her leave and earnings statement (LES), and noticed that her pay and deductions, including for local taxes, did not reflect the transfer to Florida, but rather reflected her pay as if she had remained in New York. Although Respondent once again notified OHR of the error on June 29, 2018, on July 13, Respondent once again

separate pre-offset hearing. To do so, she should request such a hearing within 10 days of receipt of this decision. 34 C.F.R. § 32.6(b). As noted in the decision, however, this constitutes a final agency decision and Respondent may not challenge the denial of the waiver request. 34 C.F.R. § 32.5 (a)(1).

² The Department's policy is set forth in the U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

³ *Waiver* is defined as "the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as [provided] by 5 U.S.C. 5584 . . . or any other law." 5 C.F.R. § 550.1103 (2014).

⁴ *See* General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828 (codified at 5 U.S.C. § 5584) (the Waiver Statute). The law of debt collection is extensive. *See, e.g., In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 1 & n. 1 (setting forth, more fully, the statutory framework governing salary overpayment debt collection); *see also* 5 U.S.C. § 5514 (2012) and 31 U.S.C. § 3716 (2012) (these statutory sections constitute significant provisions of the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Apr. 26, 1996, 110 Stat. 1321). The Department's overpayment procedures may be found on the Office of Hearings & Appeals website at: <http://oha.ed.gov/overpayments.html>.

noticed that although her LES reflected the locality pay for Florida, New York State taxes were still being deducted.

In July 2018, Respondent received notice from the U.S. Department of the Interior that she owed a debt of \$266.82 for the difference between the locality pay she received during pay period 14 and that which she should have received. Soon after, Respondent filed a request for a waiver, and in response to the Order Governing Proceedings, a sworn statement. Attached to both filings was supporting documentation. In addition, a colleague from Respondent's office, and members of OHR, and Respondent exchanged emails about the overpayment on July 23, 2018 where it was acknowledged that the overpayments did not result from Respondent's error. Respondent asserts that she did her due diligence in notifying OHR of her transfer before it became effective, and that the untimely processing of that transfer, which caused the overpayment, was not a result of her "negligence, misrepresentation, fault or lack of good faith." Respondent argues that, therefore, it is "inequitable to require [her] to repay a debt for an overpayment that was the result of a mistake caused by human resources personnel in [her] agency."

DISCUSSION

An overpayment debt resulted in this matter when Respondent moved to a location with a lower locality pay, but continued for one pay period to be paid at her previous, higher, locality pay. Respondent argues that it was an error made by OHR, and demonstrates that she took affirmative steps to prevent this error by notifying OHR of the transfer before it became effective.

It is well established that "no employee has a right to pay that he or she obtains as a result of overpayments."⁵ And, although a salary overpayment often, if not always, involves some type of error by another employee of the agency, "the administrative error by the government cannot, itself, entitle an employee to waiver."⁶ Rather, an employee must prove that when the overpayment in salary was made, she reasonably did not know that she was being overpaid.⁷ When an employee knows of a mistake, she has a duty to seek correction of the erroneous payment regardless of the government's mistake,⁸ including setting aside money to repay the additional salary.⁹

⁵ *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.

⁶ *In re Faith*, Dkt. No. 10-04-WA, U.S. Dep't of Educ. (Nov. 19, 2010) at 3; *see also In re Richard*, Dkt. No. 12-19-WA, U.S. Dep't of Educ. (Apr. 4, 2012) at 3; *In re Paul*, Dkt. No. 11-90-WA, U.S. Dep't of Educ. (Mar. 8, 2012) at 2; *In re Jason*, Dkt. No. 10-01-WA, U.S. Dep't of Educ. (Aug. 24, 2010) at 4.

⁷ *See In re Robert*, Dkt. No. 09-10-WA, U.S. Dep't of Educ. (Nov. 19, 2009) at 3; *see also In re Cruz*, Dkt. No. 08-12-WA, U.S. Dep't of Educ. (Aug. 5, 2009) at 2; *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 4-5.

⁸ *In re Faith*, Dkt. No. 10-04-WA, U.S. Dep't of Educ. (Nov. 19, 2010) at 3.

⁹ *In re Cruz*, Dkt. No. 08-12-WA, U.S. Dep't of Educ. (Aug. 5, 2009) at 2.

Here, Respondent has indicated that she knew about the different locality pay when she was paid the erroneously high salary. In fact, she notified OHR in advance of the transfer, seemingly in an effort to prevent the overpayment and then noticed the incorrect locality pay on her next LES and reported the error. Respondent cannot be granted a waiver of her duty to repay salary she knew was only provided as a result of a Departmental error, especially when the error was immediately apparent to her. Once Respondent noticed the overpayment, she had an obligation to set aside the moneys for repayment. Because a mistake by the Department, especially one that was immediately identifiable by Respondent, is not reason enough to grant a waiver, Respondent's request is denied. This decision constitutes a final agency decision.¹⁰

ORDER

Pursuant to the authority of 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the entire debt to the United States Department of Education is **HEREBY DENIED**.

So ordered this 29th day of August, 2018.

Daniel J. McGinn-Shapiro
Waiver Official

¹⁰ Respondent also raised an issue of New York State taxes improperly being deducted from her pay. This waiver decision only addresses debt Q1981276818 arising out of payment based on the locality pay for the wrong duty station, and, therefore does not address the issue of whether deductions were improperly taken for New York State taxes.