



## UNITED STATES DEPARTMENT OF EDUCATION

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In the Matter of  
**TANYA,**

**Docket No. 05-34-WA**  
Waiver Proceeding

Respondent

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### **DECISION DENYING WAIVER**

At issue in this case is whether Respondent, an employee of the U.S. Department of Education (Department), should be granted waiver of a debt based on an overpayment of salary arising from the Department's failure to deduct an employee's elected health benefit coverage for two consecutive pay periods in 2005, pay periods 0519 and 0520. For the reasons that follow, I find that waiver of this debt is not warranted. Accordingly, Respondent's request for waiver is denied.

#### DISCUSSION

##### I.

The pertinent statutory authority for waiver of a salary overpayment is set forth under the General Accounting Office Act of 1996 (the Waiver Statute), which authorizes the waiver of claims of the United States against debtors as a result of an erroneous payment of pay to a Federal employee.<sup>1</sup> The Department's *Salary Overpayment Handbook*, ACS-OM-04, specifically delegates waiver authority involving all former and current employees of the Department to the Office of Hearings and Appeals (OHA), which, thereby, exercises waiver authority on behalf of the Secretary. The undersigned is the authorized Waiver Official who has been assigned this matter by OHA,<sup>2</sup> and jurisdiction is proper because this case clearly involves

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<sup>1</sup> General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828 (the Waiver Statute); *see also 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 all salary overpayment debt collection) and 5 U.S.C. § 5514 and 31 U.S.C. § 3716 (these statutory sections constitute significant provisions of the Debt Collection Improvement Act of 1996, Pub.L. No. 104-134, April 26, 1996, 110 Stat. 1321). *See also* government-wide regulations issued by the Office of Personnel Management (OPM) (5 C.F.R. Part 550, Subpart K) and overpayment procedures on the Office of Hearings & Appeals website at: [www.ed-oha.org/overpayments/](http://www.ed-oha.org/overpayments/)

<sup>2</sup> *See*, 5 U.S.C. § 5584(b) (noting the authority held by the authorized official in waiver cases).

an erroneous payment of pay subject to waiver under the Waiver Statute at 5 U.S.C. 5584.<sup>3</sup>

The resolution of this case is based on the matters accepted as argument and evidence in the proceeding. The record in this case includes Respondent's submission of a sworn written statement dated January 6, 2006 (and the documents attached therein), a copy of a certified Notice of Change in Health Benefits Enrollment Form, (Standard Form 2810), a copy of a Bill of Collection, and a copy of Respondent's December 19, 2005 electronic message addressed to the waiver official.

## II.

Under the Federal Employees Health Benefits Act of 1959 (FEHBA),<sup>4</sup> Congress established a comprehensive employer-sponsored group health insurance program (known as the Federal Employees Health Benefits or FEHB) for Federal employees.<sup>5</sup> Under the Act, the Federal government and the employee share responsibility for premiums payable to the employee's health plan.<sup>6</sup> Under FEHB, employees who transfer from one Federal agency to another without a break in service of more than 3 days may elect to continue enrollment in the FEHB program by notifying their new payroll office of the employee's intent and completing a Notice of Change in Health Benefits Enrollment (Standard Form 2810).<sup>7</sup> To avoid a break in FEHB coverage, an employee must submit a Standard Form 2810 to the appropriate agency official of the new employer.

In August of 2005, Respondent, a former employee of the United States Mint, commenced employment with the Department. At that time, Respondent completed a Standard Form 2810 electing to continue coverage at the Department in the same health plan she participated in at her former agency. As a result, her health insurance was continued without a break in FEHB coverage. In September of 2005, Respondent logged in to a website known as "Employee Express." Employee Express is a government-wide web-based software service that allows Federal employees to eliminate the need for paper forms by viewing and inputting specified personnel and payroll information online. Using Employee Express, Respondent reviewed her payroll information and determined that the Department had not made deductions from her pay for the FEHB program. After identifying the error to the appropriate officials, the Department corrected the oversight for current and future payments, and informed Respondent she owed a debt for the preceding two pay periods of salary overpayments.

On November 11, 2005, the Department's Human Resources System Team (Human Resources) authorized issuance of a Bill of Collection (BoC) indicating that Respondent owed a debt to the Department in the amount of \$193.34 regarding overpayments occurring in 2005.<sup>8</sup>

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<sup>3</sup> An erroneous salary overpayment is created by an administrative error in an employee's pay. The fact that the agency erred in making an overpayment does not relieve the overpaid employee from liability. *See, In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005).

<sup>4</sup> Pub. L. No. 86-382, 73 Stat. 709 (codified, as amended, at 5 U.S.C. § 8901).

<sup>5</sup> FEHBA also covers dependents and retirees.

<sup>6</sup> 5 U.S.C. § 8906.

<sup>7</sup> *See* FEHB Handbook, Eligibility for Health Benefits Coverage, at <http://www.opm.gov/insure/handbook/FEHB09.asp#TRANSFER%20BETWEEN%20PAYROLL%20OFFICES>.

<sup>8</sup> This BoC sought recovery of overpayments for pay periods 19 and 20 of 2005.

Respondent timely requested waiver of the overpayment. On December 16, 2005, I issued an order requesting Respondent's submission of argument and evidence supporting her position that the debt in this case should be waived. In response to my order, Respondent identified the arguments supporting her request for waiver.

### III.

Respondent argues that a waiver of the debt is warranted because through her own diligence she discovered the error and disclosed it to the appropriate officials. In addition, Respondent argues that the error was the fault of the Department, and requiring her to repay the debt is tantamount to penalizing her for the errors of others. Finally, Respondent argues that she was unable to mitigate the size of the debt because she neither had a reason as a new employee of the Department to suspect an error in her FEHB deduction, nor a basis easily to detect the error since her net pay was "similar to [her] previous salary."

As a preliminary matter, although much of the point of Respondent's focus is aimed at the error committed by the Department, the sight of the administrative error, generally, is off the focus of a waiver proceeding. All waiver proceedings necessarily involve some type of administrative error by the employer-agency; the error is what leads to the salary overpayment. If the fact that the Federal government caused the administrative error were sufficient to warrant waiver of a debt, most debts would satisfy the requirements of the waiver statute. Of course, this cannot be so, consequently, our waiver cases have consistently acknowledged that notwithstanding that the an administrative error by the Department causes an employee to be paid at a rate that exceeds the employee's lawful rate of pay, the existence of administrative error does not, itself, entitle Respondent to waiver.<sup>9</sup> No employee has an entitlement to pay that he or she obtains as a result of an overpayment.<sup>10</sup>

The standard for determining whether waiver is appropriate requires a consideration of two factors; namely, (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* to recover the overpayment.<sup>11</sup>

In applying the first factor to the facts and issues in this case, I find that there is no doubt that there is no misrepresentation, fraud, or lack of good faith on Respondent's part. Respondent provided Human Resources with notice that she had been overpaid. Respondent's discovery of the overpayment error and her prompt disclosure of the error to the Department is consistent with the employee's on-going duty to know or duty to inquire, when appropriate, about the accuracy of her salary payments. Accordingly, where there is no otherwise indication of fault, an employee who promptly offers to repay or actually repays a salary overpayment satisfies the initial factor for determining whether waiver is appropriate.

Notwithstanding the aforementioned, the ultimate question of whether waiver may be granted also requires a showing that it is against equity and good conscience for the Federal government to recover the overpayment. Our waiver decisions have adopted a number of factors

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<sup>9</sup> *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 15, 2005).

<sup>10</sup> *Id.*

<sup>11</sup> *See In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

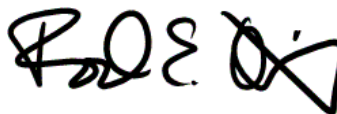
pertinent to determining whether collection of a claim against an employee is against equity and good conscience, including the following: (a) whether recovery of the claim would be unconscionable under the circumstances; (b) whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances; (c) whether recovery of the claim would impose an undue financial burden upon the debtor under the circumstances, (d) whether the time elapsed between the erroneous payment and discovery of the error and notification of the employee is excessive, (e) whether an agency's response to inquiries regarding an overpayment is unreasonably excessive, and (f) whether an agency's handling an overpayment case demonstrates gross negligence.<sup>12</sup>

When reviewing waiver requests involving administrative errors in deductions of an employee's share of the FEHB program premium, our cases have required that in addition to satisfying the fault standard, that the employee not obtain the benefit of FEHB coverage during the pay period(s) at issue.<sup>13</sup> In this proceeding, Respondent neither asserts nor provides evidence indicating she lacked coverage.<sup>14</sup> Indeed, the evidence in the record points in one direction; namely, that Respondent was eligible, entitled, and maintained FEHB coverage.<sup>15</sup> Under the circumstances, accordingly, Respondent "fails to demonstrate that it is inequitable for her to pay" the FEHB premiums that underlie the debt she owes.<sup>16</sup> Therefore, I find that in equity and good conscious and in the interests of the United States waiver should be denied. This decision constitutes a final agency decision.

#### ORDER

Pursuant to the authority of 5 U.S.C. § 5584, Respondent's request to waive the entire debt to the United States Department of Education in the amount of \$193.34 is **HEREBY DENIED**.

So ordered this 19<sup>th</sup> day of April 2006.



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Rod Dixon  
Waiver Official

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<sup>12</sup> See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005); *In re William*, Dkt. No. 05-11-WA, U.S. Dep't of Educ. (October 19, 2005); *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005).

<sup>13</sup> *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (Nov. 9, 2005).

<sup>14</sup> For example, Respondent does not argue that she was denied FEHB coverage while seeking health care.

<sup>15</sup> Under FEHBA, Respondent shares the biweekly cost of health benefits coverage with the Department.

<sup>16</sup> *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (Nov. 9, 2005).