



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

---

In the Matter of

**CARMEN,**

Respondent.

---

**Docket No. 06-21-WA**

Waiver Proceeding

**DECISION DENYING WAIVER**

Respondent, a U.S. Department of Education (Department) employee, requested waiver of a \$2,695.32 salary overpayment debt arising from the Department's failure to deduct Federal Employees Group Life Insurance (FEGLI) premiums from her pay. Based on the reasons articulated in this decision, I find that waiver of this debt is not warranted. Accordingly, Respondent's request for a waiver is denied.

**Jurisdiction**

Respondent's waiver request arises under 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 promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *seq.*) and its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04) (June 2005)<sup>2</sup>, specifically delegated the exercise of the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA).<sup>3</sup>

The undersigned is the authorized waiver official who has been assigned this matter by OHA. Resolution of this case is based on the matters accepted as argument, evidence, and/or documentation in this proceeding when considered as a whole, including the Respondent's initial

---

<sup>1</sup> See 5 U.S.C § 5584 and the General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), October 19, 1996, 110 Stat. 3828 (Waiver Statute); see also *In re Tanya*, Dkt. No. 05-34-WA, U.S. Dep't of Educ. (April 18, 2006) at 1, n.1. Statutory authority for waiving overpayments regarding unpaid FEGLI deductions also exists under 5 U.S.C. § 8707(d). See generally, *In re Millicent*, Dkt. No. 06-06-WA, U.S. Dep't of Educ. (July 7, 2006).

<sup>2</sup> The Handbook, ACS-OM-04, was revised and reissued by the Department on December 12, 2006.

<sup>3</sup> Information regarding the Department's salary overpayment process including the Handbook, ACS-OM-04, is available on OHA's website at: [www.ed-oha.org/overpayments](http://www.ed-oha.org/overpayments).

request for waiver and attached documentation, Respondent's supplemental statement and attachment, and documents compiled by the Department's Human Resources office. This decision constitutes a final agency decision.

### **Procedural History**

According to the October 31, 2000 Notice of Debt Letter and attached October 24, 2000 Bill of Collection (BoC), the overpayment arises from the Department's failure to deduct the full share of FEGLI premiums from Respondent's pay from Pay Period 11 of 1992 through Pay Period 23 of 1996. According to the BoC, Respondent elected FEGLI's optional additional insurance<sup>4</sup> effective November 3, 1991 at her previous federal agency but this agency also failed to deduct the full share of Respondent's FEGLI premiums. On or about May 3, 1992, Respondent was hired at the Department. The BoC states that Respondent's Notification of Personnel Action forms (SF-50s) were not processed to reflect Respondent's elected FEGLI coverage until 1996.

By letter dated November 7, 2000, Respondent filed a timely request for waiver. Respondent's waiver request remained inactive until it was transferred to OHA on July 20, 2006. In a September 29, 2006 Order Governing Proceedings, Respondent was afforded an opportunity to file a brief statement and/or otherwise supplement the record. Respondent filed a statement with attachments on October 18, 2006. At the tribunal's request, Respondent filed some additional documents (i.e. leave and earnings statements) on December 22, 2006.

### **Discussion**

Waiver of an erroneous salary payment is an equitable remedy available only when there is no indication of fraud, misrepresentation, fault, or lack of good faith by the debtor.<sup>5</sup> The debtor also must demonstrate that collection of the debt would be against equity and good conscience, and not in the best interests of the United States. At issue in this proceeding is whether Respondent's arguments and submissions support a request that a portion or the entire overpayment be waived in accordance with standards prescribed by statute and consistent with the case law and regulations promulgated by the Department.

### **Fault Standard**

In waiver cases, the fault standard is not limited to acts or omissions indicating fraud, misrepresentation or lack of good faith by a debtor. For the most part, if a debtor is aware of an error, he or she cannot reasonably expect to retain the overpayment.<sup>6</sup> Fault also is determined by assessing whether a reasonable person should have known or suspected that he or she was receiving more than his or her entitled salary.<sup>7</sup> An employee who neither knows nor has reason to know that he or she was erroneously compensated lacks fault under the application of this standard.<sup>8</sup> In assessing the reasonableness of a debtor's failure to recognize an overpayment, the

---

<sup>4</sup> Respondent elected FEGLI's additional coverage for five times her pay with a family option. This type of coverage is identified as Option Z on an employee's Notification of Personnel Action form (SF-50).

<sup>5</sup> See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (December 12, 2005).

<sup>6</sup> See *In re Danielle*, Dkt. No. 05-18-WA, U.S. Dep't of Educ. (October 11, 2005).

<sup>7</sup> See *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (November 9, 2005).

<sup>8</sup> See *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005) at 5.

tribunal may consider the employee's position and grade level, newness to federal employment, and whether an employee has records at his or her disposal, which, if reviewed, would indicate a salary overpayment.<sup>9</sup> Thus, every waiver case must be examined in light of its particular facts and circumstances.<sup>10</sup>

In applying the fault standard to this case, the tribunal concludes that Respondent does not lack fault. As an initial matter, the tribunal recognizes that this salary overpayment was the result of an administrative error that does not reflect any fraud, misrepresentation, or lack of good faith by Respondent; however, the tribunal finds that Respondent should have recognized the error leading to this overpayment.

Respondent elected FEGLI basic and additional optional coverage in November 1991 while employed at another federal agency. Respondent then transferred to the Department in May 1992 during Pay Period 11 of 1992. Respondent's previous agency only deducted premiums for FEGLI basic coverage from her pay.<sup>11</sup> Respondent's leave and earnings statements from her previous agency also indicate that no deductions were taken for her FEGLI additional optional coverage. Apparently, this error then carried over to her employment with the Department. As indicated in the October 24, 2000 BoC, Respondent's personnel forms did not accurately reflect her FEGLI election. Correspondingly, once Respondent transferred to the Department, only premiums for FEGLI basic coverage were deducted from her pay. After reviewing a Notification of Personnel Action form (SF-50) in May 1996, Respondent recognized that her FEGLI coverage was incorrectly listed as basic and she brought it to the attention of the Department's Human Resources office.

This case comes squarely within the ruling of *In re Jerry*, Dkt. No. 05-29-WA, U.S. Dep't of Educ. (February 16, 2006) (*Jerry*). In *Jerry*, the employee's Notification of Personnel Action form (SF-50) incorrectly listed his coverage as basic although he elected FEGLI's additional optional coverage. The tribunal held that if a Notification of Personnel Action form (SF-50) clearly reveals that sufficient premiums were not being deducted for an employee's FEGLI coverage, the employee is on notice of the error. Moreover, the tribunal also found that Respondent should have known that an error occurred because his leave and earnings statements indicated that only deductions for FEGLI basic coverage were taken and that no premiums were deducted for his additional optional coverage. Here, the circumstances are nearly identical. Respondent's Notification of Personnel Action forms (SF-50s) listed her FEGLI coverage as basic, which should have put her on notice of the error. Although Respondent failed to recognize the error until she reviewed a Notification of Personnel Action form (SF-50) in 1996, she also had records at her disposal - her leave and earnings statements - from the time the error first occurred that, if reviewed, should have alerted her to the overpayment.<sup>12</sup>

When Respondent became aware of the error she conscientiously contacted the Department in 1996. The Department took several months to correct its error. The Department

---

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See October 24, 2000 BoC and Respondent's Leave and Earning Statement for Pay Period 10 of 1992 from her previous federal employer.

<sup>12</sup> See Respondent's Leave and Earnings Statements for Pay Period 11 of 1992 and Pay Period 22 of 1996. These two leave and earnings statements bookend the time period in which the overpayment occurred at the Department.

then waited almost four years before issuing its October 30, 2000 Notice of Debt Letter to collect the debt generated by its error. Finally, Respondent's waiver request languished close to six years before it was transferred to OHA.

In *Jerry*, the Department allowed five years to elapse from the time it identified the salary overpayment to when it sent out a Notice of Debt Letter and then allowed his waiver request to remain unresolved for another five years. The tribunal held that these delays could not constitute the sole basis for meeting the fault standard.<sup>13</sup> The facts of this case compel the same result. The delay in resolving Respondent's waiver request, while unfortunate, does not mean that Respondent is without fault in failing to recognize that an overpayment occurred.

### Equity and Good Conscience

To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.<sup>14</sup> There are no rigid rules governing the application of the equity and good conscience standard. The tribunal must balance equity and/or appraise good conscience in light of the particular facts of the case.<sup>15</sup> To that end, the tribunal may consider whether recovery of the claim would be unconscionable under the circumstances. In assessing whether collection of the debt would be unconscionable, the tribunal examines whether collecting a debt is beyond what is customary or reasonable. Such unconscionable circumstances include an agency's failure to respond in a reasonable amount of time to a debtor's challenge of an overpayment and an agency's gross negligence in handling an overpayment case.<sup>16</sup>

Although Respondent has failed to meet the fault standard and, as a result, is not entitled to waiver, the tribunal will briefly consider whether collection of a debt would go against equity and good conscience. In her October 18, 2006 statement, Respondent argued that collection of this debt would be financially burdensome. Respondent attached documentation regarding medical expenses incurred by her and several family members, educational expenses incurred by her son, and living expenses for several relatives including an elderly relative who suffered significant financial losses due to being a victim of an alleged fraud. Respondent additionally argues that she attempted to resolve this error and that the Department did not act in a timely fashion to correct its error nor did it timely respond to and/or resolve her waiver request.

While this tribunal has held that delay alone cannot constitute the sole basis for meeting the fault standard, excessive delay may render collection of the debt unconscionable.<sup>17</sup> The tribunal also has held that financial hardship may be considered in determining whether collection of the debt goes against equity and good conscience.<sup>18</sup> The six-year delay in resolving

---

<sup>13</sup> See *In re Jerry*, *supra* at 5 and *In re Millicent*, *supra* at 3. See also, *In re Catherine*, *supra*. at 4 (To meet the fault standard, the tribunal held that delay must be coupled with some demonstrable harm to a debtor in pursuing his or her waiver request.).

<sup>14</sup> See 5 U.S.C. § 5584 and *In re Anh-Chau*, Dkt. No. 05-01-WA, U.S. Dep't of Educ. (June 17, 2005).

<sup>15</sup> See *In re Carolyn*, Dkt. No. 06-04-WA, U.S. Dep't of Educ. (June 28, 2006); *In re Cynthia*, Dkt. No. 05-06-WA, U.S. Dep't of Educ. (September 14, 2005).

<sup>16</sup> See *In re Jerry*, *supra*, at 6. See also, *In re Jay*, Dkt. No. 05-25-WA, U.S. Dep't of Educ. (April 18, 2006).

<sup>17</sup> See *In re Jay*, Dkt. No. 06-01-WA, U.S. Dep't of Educ. (June 23, 2006) ("In the balance of equities, it must be regarded that a seven-year delay in adjudicating a waiver request doubtlessly is detrimental to a debtor's interests.").

<sup>18</sup> See *id.* See also, *In re Shelley*, Dkt. No. 06-25-WA, U.S. Dep't of Educ. (November 28, 2006).

Respondent's request is excessive and goes beyond what is customary and reasonable. The tribunal also acknowledges that collection of this debt may constitute a financial hardship.

Balanced against these two factors is the fact that Respondent was covered for the full amount of FEGLI benefits she elected during the period for which the full premiums were not deducted. It is well settled that an employee's coverage is effective the day a FEGLI election form is approved by his or her agency.<sup>19</sup> Consequently, an employee is entitled to receive the full amount of his or her elected FEGLI coverage even though insufficient premium payments were deducted. In this case, Respondent's beneficiary would have received full payment for the FEGLI additional optional coverage of five times Respondent's annual salary if some unfortunate event had occurred. The tribunal has held that it is not inequitable to require an employee to pay for a benefit he or she received – in this case, coverage under FEGLI.<sup>20</sup> In weighing all of these factors, the tribunal finds that collection of this debt would not go against equity and good conscience.

As noted above, the tribunal recognizes that collection of this debt may constitute a financial hardship. To that end, the tribunal encourages Respondent and the Department to explore extended repayment options. Specifically, the tribunal notes that an extended voluntary repayment plan may more appropriately take into account Respondent's current financial difficulties.

---

<sup>19</sup> See *In re Jerry, supra* (The employee argued that he did not gain the benefit of his FEGLI coverage during the period at issue because the Department failed to deduct sufficient insurance premiums from his pay. The tribunal, however, noted that if an insurance payment had been triggered during this period, the debtor would have received the full amount of life insurance he elected.). See also, *In re Darryl*, Dkt. No. 05-24-OP, U.S. Dep't of Educ. (December 8, 2005).

<sup>20</sup> See *In re Jerry, supra*, at 6.

**ORDER**

Respondent requested waiver of the entire \$2,695.32 debt. Having found that the circumstances of this case do not conform to the threshold factors warranting waiver, Respondent's request for waiver is **DENIED**.

So ordered, this 28th day of December 2006.

A handwritten signature in black ink that reads "Greer Hoffman". The signature is written in a cursive style with a large, sweeping flourish at the end of the word "Hoffman".

---

Greer Hoffman  
Waiver Official