



UNITED STATES DEPARTMENT OF EDUCATION

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

In the Matter of

SHELLEY,

Docket No. 06-25-WA
Waiver Proceeding

Respondent.

DECISION GRANTING WAIVER

Respondent, a U.S. Department of Education (Department) employee, requested waiver of a \$1,490.06 salary overpayment debt arising from the Department's failure to deduct health insurance premiums for 26 pay periods. Based on the reasons articulated in this decision, I find that waiver of this debt is warranted. Accordingly, Respondent's request for a waiver is GRANTED.

Jurisdiction

Respondent's waiver request arises under 5 U.S.C. § 5584, authorizing the waiver of claims of the United States against debtors as a result of an erroneous payment of pay to a federal employee.¹ 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), specifically delegated the exercise of the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA).²

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

¹ See General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), October 19, 1996, 110 Stat. 3828; see also *In re Tanya*, Dkt. No. 05-34-WA, U.S. Dep't of Educ. (April 18, 2006) at 1, note 1.

² 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.

Procedural History

According to the December 10, 2003 Notice of Debt Letter and attached Bill of Collection (BoC), the \$1,490.06 overpayment arises from the Department's failure to deduct Respondent's share of her health insurance premiums from Pay Period 19 of 2002 until Pay Period 18 of 2003. A May 20, 2004 report compiled by the Department's HRS office states that Respondent was asked by Employee Relations to change her health benefit election form from self to family coverage in 2002 but she did not.

Respondent filed her request for waiver and attachments on December 30, 2003.³ In a September 29, 2006 Order Governing Proceedings, Respondent's request for a waiver was deemed timely and Respondent was afforded an opportunity to supplement the record.⁴ On October 15, 2006, Respondent filed a supplemental statement with the tribunal.

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.⁵ 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 instant proceeding is whether Respondent's arguments and submissions support a request that a portion or the entire erroneous salary overpayment be waived. There is no dispute that this case involves an erroneous payment of pay.⁶ The Department's error stems from its failure to deduct Respondent's share of her health insurance premiums for 26 pay periods.

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. Fault 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.⁷ In assessing the reasonableness of a debtor's failure to recognize an overpayment, the 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.⁸ Thus, every waiver case must be examined in light of its particular facts and circumstances.⁹

³ Respondent's pending waiver request was transferred to OHA on July 20, 2006.

⁴ Respondent's request for a waiver was originally filed with the Department's HRS office on December 30, 2003. On July 20, 2006, Respondent's request for a waiver was transferred to OHA.

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

⁶ An erroneous salary overpayment is created by an administrative error in the pay of an employee in regard to his or her salary. See 34 C.F.R. Part 32 (2005).

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

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

⁹ See *id.* at 5.

Respondent states that she did not request a change in her health insurance coverage from self to family in 2002. Instead, Respondent asserts that she canceled a pending October 1, 2000 request to change from self to family coverage within two days of submitting her request. Respondent states that she made the request because her husband lost his health insurance coverage due to a job loss but that he was hired by another employer who provided health insurance coverage within two days of when she made her October 1, 2000 request. Respondent maintains that she contacted the Department's HRS office to find out if she could cancel her pending request and was informed that since the initiated change was not yet processed (i.e. made effective), it could be canceled without any required further action on her part.

According to Respondent, her husband was covered under his own separate health insurance during the 26 pay periods at issue. Respondent asserts that she was unaware that there was a problem with her health insurance until she was contacted in 2003 by HRS and told that she should submit a waiver request of payment of retroactive premiums. Respondent states that she submitted such a request. Then, Respondent states that she received an email from HRS stating that it did not have the authority to grant such a waiver. Respondent then met with HRS and was told that she could change her coverage back to self only during the next open enrollment season for health insurance. During the next open season (November 2003), Respondent submitted such a request.

An employee who wishes to change his or her enrollment outside of an open election season must have a qualified life event (QLE) to make an enrollment change.¹⁰ A QLE is a term defined by OPM to describe events deemed acceptable by the IRS that may allow a premium conversion participant¹¹ to change his or her participation election outside of an open season. A QLE includes a change in an employee's or his or her spouse's employment status such as gaining or losing a job.¹²

In applying the fault standard to this case, the tribunal concludes that Respondent is not at fault. Respondent properly completed a Health Benefits Election Form on October 1, 2000 based on a QLE – her husband's job loss. The tribunal accepts Respondent's statement that she contacted the Department's HRS office to cancel her election request for family health insurance coverage and was told that no further action was required. Typically, to cancel such an election, Respondent should have completed another Health Benefits Election Form based on her second QLE - her husband's reemployment. Respondent, however, was informed that she did not have to complete another election form because the election form changing her coverage from self only to family was not yet processed. Finally, Respondent's own Leave and Earnings Statements from Pay Period 23 of 2000 and Pay Period 17 of 2003 indicate that she remained enrolled in a self-

¹⁰ See Federal Employees Health Benefits Program (FEHB) Qualified Life Events (QLE) Frequently Asked Questions (FAQ) available at <http://www.opm.gov/insure/health/pretaxfehb/qanda/17.asp> and the FEHB Handbook available at <http://www.opm.gov/insure/handbook/fehb10.asp#qle>.

¹¹ Most federal employees are premium conversion participants in the FEHB. Premium conversion means that an employee's premiums are deducted from his or her pre-tax earnings. See 5 C.F.R. § 892.102.

¹² See 5 C.F.R. §§ 892.101 and 890.301(e).

only health insurance plan.¹³ Thus, Respondent had no reason to suspect that her requested change in enrollment was not canceled.

The BoC states that Respondent requested an enrollment change effective Pay Period 19 of 2002. Respondent denies that she made such a request and the Department's records contain no documents supporting the BoC's contention that Respondent made an enrollment change in 2002. Further, there is no explanation as to why HRS' report states that Respondent's supervisor asked her to complete another election form or what previous election form the report implicitly references. Again, there is no evidence in the record indicating that Respondent attempted to change her enrollment in 2002 – the only documentation contained in the record relates to her October 1, 2000 request, which may have been unsuccessfully canceled. Furthermore, if Respondent's October 1, 2000 request was not canceled and the prior election form alluded to in the BoC is her October 1, 2000 request, the tribunal is at a loss to explain why the Department did not seek to recover the unpaid premiums back to October 8, 2000, the effective date listed in Respondent's October 1, 2000 election form.

The lack of clarity in both the BoC and HRS' report underscores Respondent's lack of awareness that she was enrolled in a family plan for her health insurance coverage. As there is no evidence in the record relating to an election made in 2002, the tribunal is left to surmise that the election referred to by HRS was the one she almost immediately attempted to cancel in October 2000. Further, the guidance Respondent received from HRS in October 2000 may have needlessly and unknowingly created the circumstances leading to this overpayment. If Respondent was informed that she should have submitted another Health Benefits Election Form once her husband was reemployed, Respondent's requested election change may have been canceled successfully. More importantly, as the tribunal is forced to conclude that the BoC relates to Respondent's canceled October 1, 2000 request, her failure to recognize that an overpayment occurred is reasonable.

Equity and Good Conscience

To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.¹⁴ Beyond this framework, 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.¹⁵ Factors weighed by the tribunal include the following: whether recovery of the claim would be unconscionable under the circumstances; whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; whether recovery of the claim would impose an undue financial burden on the debtor; whether the time elapsed between the erroneous payment and the agency's discovery of the error and subsequent employee notification is excessive, and whether the cost collection the claim equals or exceeds the amount of the claim.¹⁶

¹³ See Attachment # 2 to Respondent's December 30, 2003 statement showing enrollment code 104 (self only) for her health insurance premium deduction for these two leave and earning statements.

¹⁴ See 5 U.S.C. § 5584 and *In re Veronce supra* at 5.

¹⁵ See *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (December 14, 2005).

¹⁶ See *id.*

Respondent argues that her husband was covered by his employer's health insurance and that she did not submit any health insurance claims on his behalf. To support her claim, Respondent submitted a statement from her husband's employer that he was covered under his employer's plan since November 1, 2000.¹⁷ Respondent also argues that her husband paid premiums for his own health insurance coverage during the pay periods at issue. Finally, Respondent argues that repayment of this debt would create a financial hardship due to the loss of her husband's income and legal fees incurred as a result of her ongoing divorce proceedings as well as expenses she is currently incurring due to uncovered medical expenses totaling at least \$10,000.

In other cases, the tribunal has determined that "[i]t is not inequitable ... for an employee to pay for health insurance coverage, which [he or] she elected."¹⁸ This rule, however, has not been rigidly applied in all waiver cases involving unpaid health insurance premiums if the particular circumstances do not warrant its application.¹⁹ In this case, the tribunal finds that it would be inequitable for Respondent to pay for family coverage when she attempted to cancel such an election and was not aware that this cancellation did not take place. Respondent remained unaware that her husband was included in her health insurance coverage, and did not submit claims for his medical expenses. In fact, the evidence demonstrates that Respondent's husband separately paid for his health insurance through his own employer and was covered under his employer's plan. Further, the tribunal is convinced that repayment of this debt would create a financial hardship based on Respondent's aforementioned financial circumstances. Therefore, Respondent has shown that recovery of the debt would go against equity and good conscience.

ORDER

Respondent requested waiver of the entire debt. Having found that the circumstances of this case conform to the threshold factors warranting waiver, Respondent's request for waiver of the entire debt is **GRANTED**.

So ordered, this 28th day of November 2006.



Greer Hoffman
Waiver Official

¹⁷ See Attachment # 1 to Respondent's December 30, 2003 statement.

¹⁸ See *In re Andrew*, Dkt. No. 06-76-WA, U.S. Dep't of Educ. (November 14, 2006) at 4, note 12.

¹⁹ See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (December 12, 2005) and *In re Dineo*, Dkt. No. 06-07-WA, U.S. Dep't of Educ. (August 1, 2006).