



**UNITED STATES DEPARTMENT OF EDUCATION**

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

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In the Matter of

**PAMELA,**

**Docket No. 06-28-WA**  
Waiver Proceeding

Respondent.

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**DECISION GRANTING WAIVER**

Respondent, a former U.S. Department of Education (Department) employee, requested waiver of a \$648.82 salary overpayment debt arising from the Department's failure to deduct health insurance premiums for three 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.<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), specifically delegated the exercise of the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA).<sup>2</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 request for waiver and attached documentation, her supplemental statement, documents compiled by the Department's Human Resources (HRS) office and documents filed by the Department's payroll contractor, the U.S. Department of the Interior's National Business Center. This decision constitutes a final agency decision.

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<sup>1</sup> 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.

<sup>2</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).

## Procedural History

According to the July 9, 2004 Notice of Debt Letter and attached Bill of Collection (BoC), the \$648.82 overpayment arises from the Department's failure to deduct Respondent's share of her health insurance premiums from Pay Period 2 of 2004 until Pay Period 4 of 2004. As stated in the BoC, Respondent's personnel action effecting the termination of her temporary employment was processed late; as a result, the Department paid Respondent's health insurance premiums for three pay periods (\$208.36, \$220.23, and \$220.23) even though she was in a non-pay status.

Respondent filed her request for waiver and attachments on July 14, 2004.<sup>3</sup> In a May 11, 2007 Order Governing Proceedings, Respondent's request for a waiver was deemed timely and Respondent was afforded an opportunity to supplement the record. On May 25, 2007, Respondent filed a short statement and attachments.

## 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>4</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 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.<sup>5</sup> The Department's error stems from its continued payment of health insurance premiums for three pay periods once Respondent entered a non-pay status near the end of her contractual employment at 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. 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.<sup>6</sup> 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.<sup>7</sup> Thus, every waiver case must be examined in light of its particular facts and circumstances.<sup>8</sup>

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<sup>3</sup> Respondent's request for a waiver was originally filed with the Department's Human Resources office. On July 20, 2006, Respondent's request for a waiver was transferred to OHA.

<sup>4</sup> See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (December 12, 2005).

<sup>5</sup> 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).

<sup>6</sup> See *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (November 9, 2005).

<sup>7</sup> See *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005).

<sup>8</sup> See *id.* at 5.

In her July 14, 2004 waiver request, Respondent states that she was employed under a one-year contract and worked through the end of Pay Period 2 of 2004. She further states that a new contract extending her employment was discussed and she was told there would only be a one pay period break in service. Although that extension unexpectedly failed to materialize, Respondent explains that she resumed working under a short-term contract in late May 2004. Respondent argues that it was unclear as to how long she and her family were covered. She asserts that she was told, ostensibly by the Department's human resources office, that she and her family's health insurance coverage was in place either through the end of May 2004 or through the next pay period. Respondent maintains that she made a special trip to the Department's main building to complete the necessary paperwork to continue her health insurance benefits.<sup>9</sup> Despite her efforts, Respondent claims that delays in the Department's human resources office resulted in a short break (approximately one week) in coverage and she began paying the full premiums insurance directly to the insurance carrier. According to Respondent, she paid \$1288.94 to her insurance carrier in March 2004 for her continued health insurance coverage.

In Respondent's May 23, 2007 statement, she argues that she believed this matter was resolved since she did not hear from the Department after filing her July 14, 2004 request. Respondent further states that she no longer possesses the materials or documents most relevant to the case and that her recollection of the events surrounding the overpayment has faded with time. Respondent also asserts that as her employment with the Department had ended (i.e. no longer under contract) and she was not paid for Pay Periods 3 and 4 of 2004, the Department should not have paid her share of health insurance premiums to the insurer and if such payments were made, they were inappropriate. Respondent also reiterates that she completed the paperwork to continue her health insurance coverage for her and her family after she stopped working at the Department. Finally, Respondent maintains that the overpayment occurred through no fraud, misrepresentation, fault or lack of good faith on her part.

In applying the fault standard to this case, the tribunal concludes that Respondent is not at fault. Respondent completed paperwork to continue her health insurance coverage under COBRA and she no longer worked at the Department when the agency paid out health insurance premiums to her insurance carrier. She also did not expect to receive any salary payments for two of the pay periods at issue. Moreover, Respondent paid \$1288.94 to her insurance carrier by separate check to continue her coverage. Given these factors, it is understandable that Respondent did not recognize that she received an overpayment and, in fact, believed that she paid for her health insurance premiums under COBRA.

Although Respondent mistakenly believed her \$1288.64 payment covered her premiums for Pay Periods 2 – 4 of 2004, the tribunal is convinced that her belief was genuine. To clear up any confusion on this matter, the tribunal requested that the Department's payroll contractor submit documentation regarding the alleged overpayment given Respondent's assertion that she separately paid for her health insurance coverage. According to documentation submitted to the

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<sup>9</sup> Under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), workers and their families who lose their health benefits have the right to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Qualified individuals may be required to pay the entire premium for coverage up to 102 percent of the cost to the plan.

tribunal, the \$648.82 overpayment stems from premiums owed prior to February 11, 2004 – the date her insurance carrier states is when she began separately paying for her coverage.<sup>10</sup> Despite Respondent’s mistaken belief, the tribunal finds that she had no reason to suspect that an overpayment occurred. Finally, the tribunal accepts Respondent’s argument that the passage of time has dimmed her recollection of events and that she no longer possesses all of the documentation relevant to her case. To that end, the tribunal finds that the three-year delay in resolving this case has impacted Respondent’s ability to pursue her waiver request.

### 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>11</sup> 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.<sup>12</sup> 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 of collection the claim equals or exceeds the amount of the claim.<sup>13</sup>

Respondent argues that she made a special effort to complete the appropriate paperwork to continue her health insurance coverage through COBRA and that she was unaware that the Department continued to pay her portion of her premiums after her employment ended. She also maintains that she did nothing untoward and that her then-believed break in coverage caused her much anxiety as she was providing coverage for her husband and children. Finally, Respondent points to the delay in resolving her waiver case.

In this case, the tribunal finds that it would be inequitable to require that Respondent repay this debt. Respondent was unaware that the Department continued to pay her share of her health insurance premiums. She also incurred the added expense of paying the entirety of her health insurance premiums under COBRA due to an unintended break in service. As Respondent indicates, she was supposed to remain employed under contract with the Department but it fell through unexpectedly and she did not begin working again at the agency until a few weeks later in May 2004. The tribunal accepts Respondent’s assertion that her belief that she incurred a break in coverage caused her great anxiety.

Finally, a delay of three years does not automatically establish that the passage of time accrued to Respondent’s detriment;<sup>14</sup> it is, however, excessive and goes beyond what would be

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<sup>10</sup> See May 1, 2007 memorandum from the Department’s payroll contractor at the U.S. Dep’t of Interior’s National Business Center.

<sup>11</sup> See 5 U.S.C. § 5584 and *In re Veronce supra* at 5.

<sup>12</sup> See *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (December 14, 2005).

<sup>13</sup> See *id.*

<sup>14</sup> *Id.* See *In re Jay*, Dkt. No. 05-25-WA, U.S. Dep’t of Educ. (April 18, 2006) (A seven-year time period that elapsed during the pending resolution of Respondent’s waiver case is excessive) and *In re Cheryl*, Dkt. No. 05-28-WA, U.S.

customary or expected in a waiver case.<sup>15</sup> As such, the three-year delay in resolving Respondent's waiver request remains a factor in the balance of equities. In *Catherine*,<sup>16</sup> the hearing official held that waiver of a debt generated by the failure to pay health insurance premiums is appropriate when the debtor's waiver request languishes unresolved for a period long enough to render a "misimpression that the matter was resolved", and that the passage of time affected the debtor's ability to pursue his or her waiver request. Here, the tribunal is persuaded that the three-year delay has impacted Respondent's ability to pursue her waiver request. Based on the foregoing, 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 31st day of July 2007.



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Greer Hoffman  
Hearing Official

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Dep't of Educ. (February 17, 2006) (Over seven years is beyond what would be customary or expected to resolve a waiver request).

<sup>15</sup> See *In re Suzanne*, Dkt. No. 06-56-WA, U.S. Dep't of Educ. (April 26, 2007).

<sup>16</sup> Dkt. No. 05-26-WA, U.S. Dep't of Educ. (Dec. 12, 2005)