



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS

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WASHINGTON, D.C. 20202-4616

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In the Matter of
JEANNE,

Docket No. 06-38-WA
Waiver Proceeding

Respondent

ORDER OF DISMISSAL

Effective June 8, 2005, the Office of Hearings and Appeals (OHA) was delegated waiver authority over salary overpayment claims against current and former U.S. Department of Education (Department) employees.¹ On July 20, 2006, the request for a waiver filed by the above-captioned Respondent was transferred to OHA's jurisdiction.²

According to the April 7, 2003 Bill of Collection and Notice of Debt Letter (NDL), the overpayment stems from the Department's failure to reduce Respondent's pay to her original salary once her temporary promotion ended. By email dated August 6, 2003, Respondent filed a request for waiver in the above-captioned proceeding stating that the overpayment occurred

¹ The 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. Pursuant to the aforementioned statutes and the Debt Collection Act of 1982, as amended, the Department has promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *et. seq.*), and set forth policy governing the overpayment process in its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04) (May 2005). Together, these legal authorities prescribe procedures for handling debts, authorizing deductions from wages of federal employees and/or former employees to pay debts to the United States for such things as salary overpayments, and setting standards for waiving those debts. The Handbook, ACS-OM-04, specifically delegated the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA). The Department's regulations and the Handbook are available at OHA's website <http://www.ed-oha.org>.

² Cases predating the delegation of OHA's waiver authority were not automatically transferred to OHA. A substantial number of these cases have now been transferred to OHA, including Respondent's waiver request.

through administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on her part.

On September 15, 2003, the Department's Office of General Counsel informed Respondent that her waiver request was untimely noting that Respondent's request was filed several months after the 15-day period for requesting a waiver had expired. Due to an administrative oversight, Respondent's request was not formally dismissed although collection of the \$94.35 debt was completed on September 5, 2003.

The aforementioned notwithstanding, Respondent did not present any grounds for granting waiver. More importantly, Respondent's failure to timely request a waiver of her debt warrants dismissal of her waiver request. This dismissal operates as an adjudication on the merits, and constitutes a final agency decision.³

Accordingly, it is **HEREBY ORDERED** that this proceeding is **DISMISSED**.

A handwritten signature in black ink that reads "Greer Hoffman". The signature is written in a cursive, flowing style.

Greer Hoffman
Waiver Official

Dated: November 17, 2006

³ The dismissal is with prejudice; thus, Respondent may not re-file her waiver request. *See In re Donald*, Dkt. No. 06-70-WA, U.S. Dep't of Educ. (September 29, 2006) at 2, footnote 1.