



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

MARY,

Docket No. 06-64-WA
Waiver Proceeding

Respondent

DISMISSAL

On August 29, 2006, the tribunal issued an order acknowledging receipt of Respondent's request for waiver of a **\$42,154.51** salary overpayment debt. The order set forth the procedures central to pursuing waiver of a debt, and required Respondent to: file a short statement, not to exceed five typewritten pages, that: (1) explained the circumstances of the overpayment to the best of Respondent's knowledge, (2) stated why Respondent believed a waiver should be granted, (3) indicated what steps, if any, Respondent took to bring the matter to the attention of the appropriate official or supervisor and the agency's response, and (4) fully explained, with reasonable specificity, all the facts, documents, and sworn statements, if any, which supported Respondent's position. This order was sent to Respondent's electronic mail address. Respondent confirmed receipt of the order by telephone on August 29, 2006.

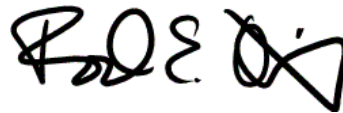
On September 29, 2006, Respondent's time for filing the statement identified above expired. Respondent was offered an opportunity to extend the time for filing upon a showing of good cause. To date, Respondent has neither requested more time to comply with the aforementioned order, nor filed a statement supporting her waiver request.

At issue in this case is whether a reemployed employee of the Department of Education (Department) should be granted waiver of a debt arising from an overpayment of salary occurring as a result of the Department's erroneous payment of salary paid to Respondent while she also received her full annuity. For reasons that follow, Respondent's waiver request is **DISMISSED**.

Respondent was reemployed by the Department in 1997 at an equivalent grade and step to the position from which she retired. Under the Federal Employee Retirement System, an individual's reemployment in Federal service affects their status as an annuitant. In Respondent's case, if a reemployed individual continues to receive an annuity while working, the employee's pay must be reduced by the amount of annuity paid for the period worked; Respondent's pay was erroneously never reduced by the required amount during the period at issue. Since Respondent has begun repaying this debt, she would have been entitled to a refund, if she prevailed in the waiver proceeding.

The aforementioned notwithstanding, Respondent has not presented any grounds for granting waiver of her debt. More to the point, Respondent's disregard of or failure to comply with the procedures in this case clearly warrants dismissal of the waiver request. This decision operates as adjudication upon the merits, and constitutes a final agency decision.¹

ACCORDINGLY, it is hereby ORDERED: That this proceeding is DISMISSED.



Rod Dixon
Waiver Official

Dated: October 19, 2006

¹ The dismissal is with prejudice, and Respondent may not re-file a request for waiver on the same debt. *See, e.g., In re Donald*, Dkt. No. 06-70-WA, U.S. Dep't of Educ. (September 29, 2006); *Semtek International Inc., v. Lockheed Martin Corp.*, 531 U.S. 497 (2001) (under federal common law, a dismissal *with* prejudice directly relates to the jurisdiction of the dismissing tribunal).