



## UNITED STATES DEPARTMENT OF EDUCATION

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

TELEPHONE (202) 619-9700

FACSIMILE (202) 619-9726

---

In the Matter of

**DONALD,**

**Docket No. 06-70-WA**  
Waiver Proceeding

Respondent

---

### DISMISSAL

On August 2, 2006, the tribunal issued an order acknowledging receipt of Respondent's request for a waiver of a **\$194.43** overpayment of salary. In addition to setting forth procedures central to a waiver proceeding, the order required Respondent to: file a short statement, not to exceed five typewritten pages, that: (1) explains the circumstances of the overpayment to the best of Respondent's knowledge, (2) states why Respondent believes a waiver should be granted, (3) indicates 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 identifies and explains with reasonable specificity all the facts, documents, and sworn statements, if any, which support Respondent's position. The order was sent to Respondent's electronic mail address.

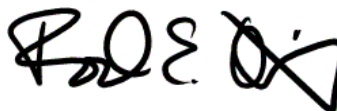
On September 14, 2006, Respondent sent an email to the undersigned seeking to "confirm" that the tribunal received a "package" sent by Respondent. Respondent did not indicate where or to whom his package was sent. Respondent acknowledged that his email was triggered by a voicemail message from the undersigned recorded on Respondent's home voicemail inquiring whether Respondent had received the tribunal's August 2006 order. On September 14, 2006, as a result of Respondent's email, the tribunal replied by email by sending Respondent a copy of the August 2006 order and extended the time for submitting a response until the close-of-business on September 22, 2006.

On September 28, 2006, Respondent sent an email inquiring whether the tribunal had located the package he sent in August. Respondent also requested that "the balance of [his] sick leave be applied to what the Dept. is saying that [he] owe [d] them" and inquired whether the

tribunal could “let [him] know what the balance is in terms of dollars that the Dept. is saying that [he] need[ed] to repay?” Lastly, Respondent expressed a desire that “we...put this to rest ASAP.” Therefore, and, in accordance with the authority of the undersigned, as the waiver official, to terminate the waiver proceeding, lift the stay of debt collection, and return this matter to the Office of the Chief Financial Officer for prompt debt collection, the tribunal will grant Respondent’s last request by putting this matter to rest. To date, Respondent has not presented any grounds for granting waiver of his debt. In addition, aside from the potential merits of his arguments, Respondent’s apparent disregard of time requirements and procedures for obtaining a waiver does not weigh in his favor in a matter, such as this, in which equitable principles govern the result. Respondent has neither complied nor shown good faith of compliance with the procedures in this case.

ACCORDINGLY, it is hereby ORDERED:

That the stay of the debt collection process is LIFTED, and this proceeding is DISMISSED.<sup>1</sup> This order constitutes a final agency decision.



---

Rod Dixon  
Waiver Official

Dated: September 29, 2006

---

<sup>1</sup> The import of this dismissal is that it is with prejudice and “operates as an adjudication upon the merits.” Respondent may not re-file a request for waiver on the same debt. *See, e.g., Semtek International Inc., v. Lockheed Martin Corp.*, 531 U.S. 497 (2001) (expressing the view that under federal common law, a dismissal *with* prejudice directly relates to the dismissing tribunal).