



UNITED STATES DEPARTMENT OF EDUCATION

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

In the Matter of

ANNETTE,

Docket No. 06-72-WA
Waiver Proceeding

Respondent.

DISMISSAL

On September 22, 2006, the tribunal issued an order acknowledging receipt of Respondent's request for a waiver of a \$3,028.91 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. Respondent also was ordered to submit a copy of the Notice of Debt Letter and Bill of Collection with her statement.¹ Respondent was required to submit the aforementioned statement to the tribunal on or before October 12, 1996. The order was sent to Respondent's electronic mail (e-mail) address.

On October 12, 2006, Respondent submitted a brief statement responding, in part, to the tribunal's September 22, 2006 Order;² however, the following day, Respondent filed a statement with the tribunal stating that she still was trying to compile documentary support for her waiver request. In response, on October 13, 2006, the tribunal informed Respondent that she may request additional time to file a complete statement and supporting documentation. On October 18, 2006, Respondent requested an extension of time. Respondent was granted an extension until November 1, 2006. Respondent missed the November 1, 2006 filing deadline. On December 13, 2006, Respondent requested another extension of time until February 15, 2007 in order to retrieve

¹ An individual requesting a waiver is required to submit a copy of the debt letter and bill of collection with his or her initial waiver request. As Respondent failed to submit these documents, she was ordered to submit them with her statement.

² Respondent's statement did not fully address the waiver standard nor did she submit copies of the debt letter and bill of collection or any other documentation supporting her waiver request.

documents from the Internal Revenue Service that she believed were pertinent to her waiver request. The tribunal granted Respondent's request that same day.

On February 20, 2007, Respondent requested a 45-day delay to give her union representative time to review her case.³ On February 21, 2007, the tribunal granted Respondent an extension of time until March 13, 2007. After speaking with the tribunal by telephone on March 19, 2007, Respondent's representative filed a March 23, 2007 request for an extension of time so that she could request documents from the Respondent's human resources office and from the Department's payroll contractor. On March 23, 2007, the tribunal granted an extension of time until April 6, 2007.

On April 18, 2007, Respondent's representative filed a statement with the tribunal indicating that a response from Respondent's office was expected by April 19, 2007. Respondent's representative did not, however, request additional time. On April 26, 2007, the tribunal informed Respondent's representative that she did not request additional time to file a response and that the extension already had expired on April 6, 2007. The tribunal also reiterated that Respondent should file a motion requesting an extension and that this motion detail the need for additional time. Respondent's representative then requested an additional two weeks for her to receive the documents requested from Respondent's office. On April 26, 2007, the tribunal granted an extension of time until May 18, 2007. On May 25, 2007, the tribunal informed Respondent's representative that the extension of time had expired. The tribunal further informed Respondent's representative that there are procedural rules governing waiver proceedings and it is the responsibility of Respondent through her representative to comply with the tribunal's procedural orders.


On May 30, 2007, Respondent filed a request for an extension of time, which stated that her representative was on personal leave and that she still had not received the requested documentation from her office. On May 31, 2007, the tribunal granted an extension until June 7, 2007. On June 7, 2007, Respondent's representative filed a statement with the tribunal indicating that she had received a reply from Respondent's office and requested an extension of time until after they spoke with Respondent's office on June 11, 2007. On June 7, 2007, the tribunal granted Respondent's request for an extension until June 12, 2007.

Respondent's representative did not submit a statement nor did she request additional time once the extension expired on June 12, 2007. On June 19, 2007, the tribunal issued an Order to Show Cause as to why I should not dismiss Respondent's waiver request. In that order, Respondent was given until June 25, 2007 to respond. To date, Respondent's representative has neither filed a statement nor requested additional time for filing a statement.

In accordance with my authority as a Waiver Official, I have the discretion to terminate the waiver proceeding, lift the stay of collection, and return this matter to the Department's human resources office for prompt debt collection. Waiver is an equitable remedy and the tribunal has found that a "... Respondent's apparent disregard of time requirements and procedures for

³ Up until Respondent's February 20, 2007 filing, Respondent had not informed the tribunal that she had a representative nor had her representative entered a notice of appearance with the tribunal.

obtaining a waiver does not weigh in ... [her] favor”⁴ To that end, the tribunal notes that this matter has been pending for nine months and that Respondent has repeatedly failed to comply with the tribunal’s orders. Therefore, it is hereby ordered that this proceeding is **DISMISSED** with prejudice⁵ and that the stay of the debt collection process is **LIFTED**. This dismissal constitutes a final agency decision.



Greer Hoffman
Waiver Official

Dated: June 28, 2007

⁴ See *In re Donald*, Dkt. No. 06-70-WA, U.S. Dep’t of Educ. (September 29, 2006) (The Waiver Official dismissed the waiver request due to his failure to present any grounds for waiving the debt and for failing to comply with the tribunal’s procedural orders.). See also, *In re Mary*, Dkt. No. 06-64-WA, U.S. Dep’t of Educ. (October 19, 2006) and *In re Marvin*, Dkt. No. 06-14-WA, U.S. Dep’t of Educ. (July 26, 2006).

⁵ “The import of this dismissal is that it is with prejudice and “operates as an adjudication upon the merits.” See *In re Donald*, *supra*, at 2, n.2, quoting *Semtek International, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001).