



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

In the Matter of

ANDREW,

Docket No. 06-76-WA

Waiver Proceeding

Respondent.

DECISION DENYING WAIVER

Respondent, a U.S. Department of Education (Department) employee, requested waiver of a \$31.07 salary overpayment debt arising from the Department's failure to deduct his health insurance premium for one pay period. Based on the reasons articulated in this decision, I find that waiver of this debt is not warranted. Accordingly, Respondent's request for a waiver is DENIED.

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.¹ 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).²

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, and documents compiled by the Department's Human Resources office. This decision constitutes a final agency decision.

¹ 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.

² 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.

Procedural History

According to the August 17, 2006 Notice of Debt Letter and attached Bill of Collection, the \$31.07 overpayment arises from the Department's failure to deduct Respondent's share of his health insurance premium from his first salary payment because the personnel action processing his health benefits was processed late. Respondent joined the Department on May 30, 2006 during Pay Period 16 of 2006.

Respondent filed his request for waiver on September 21, 2006 after the 15-day time period for filing such a request expired. Respondent requested that the tribunal accept his waiver request as timely because he had difficulty in retrieving the letter from the U.S. post office and he was confused by the Department's Notice of Debt Letter and Bill of Collection. On September 29, 2006, the tribunal accepted Respondent's waiver request as timely and issued an Order Governing Proceedings. On October 25, 2006, at the tribunal's behest, Respondent stated that he would not be submitting any additional documentation and asked that his waiver request be decided on the basis of his September 21, 2006 statement.

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.³ 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.⁴ The Department's error stems from its failure to deduct Respondent's share of his health insurance premium for one pay period.

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.⁵ 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.⁶ Thus, every waiver case must be examined in light of its particular facts and circumstances.⁷

³ See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (December 12, 2005).

⁴ 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).

⁵ See *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (November 9, 2005).

⁶ See *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005).

⁷ See *id.* at 5.

Respondent asserts that he promptly completed and submitted his personnel paperwork on May 30, 2006 and that he is uncertain as to why this overpayment occurred. Respondent argues that he had no control over entering or submitting personnel actions and thus, should be granted a waiver.

In applying the fault standard to this case, the tribunal concludes that Respondent is not at fault. Respondent was a new employee who promptly completed his personnel paperwork including the documentation related to his health insurance benefits. The overpayment occurred during the first pay period in which Respondent was employed at the Department. A new employee who completes health benefits paperwork during the first pay period of his or her employment may not be aware that health insurance premiums should be deducted from that first salary payment. A new employee unfamiliar with the Department's leave and earnings statements also may not be able to recognize this error in reviewing the first statement he or she receives.

Respondent submitted his paperwork on the second workday of his first pay period (i.e. May 30, 2006) which he also indicated was his first day of employment. Respondent's health insurance premiums were properly deducted thereafter, leaving only one pay period – his first – as the only one where the error occurred. Had the Department's failure to deduct health insurance premiums continued for an extended period of time and was evidenced by the continued absence of these deductions on Respondent's leave and earnings statements, his failure to recognize such an error may not be reasonable.⁸ This is not, however, the case here. Therefore, Respondent's failure to recognize that an overpayment occurred is reasonable.

Equity and Good Conscience

To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.⁹ 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.¹⁰ 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 collection the claim equals or exceeds the amount of the claim.¹¹

Although the tribunal finds that Respondent was not at fault for the overpayment, collection of the debt would not go against equity and good conscience. As an initial matter, the tribunal notes that Respondent did not raise any equitable arguments against collecting this debt.

⁸ See *In re Tammy supra*, note 5. (The Department's failure to deduct health insurance premiums continued for seven pay periods. Respondent was employed for several months when a second error regarding her health insurance premiums occurred, she had several leave and earnings statements documenting the Department's failure and she failed to inquire about the error. Thus, Respondent did not lack fault.).

⁹ See 5 U.S.C. § 5584 and *In re Veronce supra* at 5.

¹⁰ See *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (December 14, 2005).

¹¹ See *id.*

In other cases, the tribunal has determined “[i]t is not inequitable ... for an employee to pay for health insurance coverage, which [he or] she elected.”¹² There is no evidence in the record that indicates that Respondent did not gain the benefit of health insurance coverage for the pay period at issue. Indeed, the evidence points to the contrary – that Respondent’s share of his health insurance premiums began to be deducted following his first pay period of employment, and he was covered by health insurance during his first pay period at the Department. Therefore, Respondent has not shown that recovery of the debt would be unconscionable or otherwise inequitable.

ORDER

Respondent requested waiver of the entire debt. Having found that the circumstances of this case do not conform to the threshold factors warranting waiver, Respondent’s request for waiver of the entire debt is **DENIED**.

So ordered, this 14th day of November 2006.

A handwritten signature in black ink that reads "Greer Hoffman". The signature is written in a cursive style with a large, sweeping initial "G".

Greer Hoffman
Waiver Official

¹² See *In re Tammy*, *supra*, at 5. See also, *In re Tanya*, Dkt. No. 05-34-WA, U.S. Dep’t of Educ. (April 19, 2006).