



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

In the Matter of

GLADYS,

Respondent.

Docket No. 07-06-WA

Waiver Proceeding

DECISION GRANTING WAIVER

Respondent, a former U.S. Department of Education (Department) employee, filed a request for waiver of a salary overpayment of \$619.68. The debt arose when the Department erroneously paid Respondent for 40 hours of work after her date of separation. Based on my review, waiver of this debt is warranted. Accordingly, Respondent's request for a waiver is GRANTED.

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 set forth its policy governing the overpayment process in its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04) (June 2005).² Together, these legal authorities prescribe procedures for processing salary overpayments made to current or former federal employees and set 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 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 (Act); see also *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005), footnote # 1.

² The Handbook, ACS-OM-04, was revised and reissued by the Department on March 30, 2007.

PROCEDURAL HISTORY

The procedural history of this case is convoluted. The Department originally issued a February 17, 1998 Bill of Collection (BoC) and Notice of Debt Letter (NDL) identifying a \$619.68 overpayment of salary to Respondent. On three occasions, Respondent filed correspondence with the Department's human resources office regarding this salary overpayment including a request for waiver.³ For reasons unknown to the tribunal, Respondent's waiver request was not resolved.⁴ On March 27, 2007, Respondent received a duplicate notice regarding the debt at issue in this case and she filed a request for waiver dated April 9, 2007. Due to the Department's re-issuance of a BoC for this same debt, the March 27, 2007 bill was cancelled and Respondent's waiver request was dismissed on May 14, 2007. On May 15, 2007, Respondent's original waiver request was transferred to OHA. On May 18, 2007, the tribunal issued an Order Governing Proceeding, which allowed Respondent to supplement any prior information in this matter. Respondent did not file any additional statement with the tribunal.⁵

DISCUSSION

Waiver of a debt under 5 U.S.C. § 5584 is an equitable remedy. To secure waiver of an erroneous payment of pay,⁶ a debtor must demonstrate that he or she is not at fault in accepting or not recognizing an overpayment of salary. The debtor also must show that collection of the debt would be against equity and good conscience, and not in the best interests of the United States.

Fault Standard

Fault is not limited to acts or omissions indicating fraud, misrepresentation or lack of good faith by the debtor. Fault also 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.⁷ In evaluating 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 the employee has records at his or her disposal, which, if reviewed, would indicate a salary overpayment.⁸ Thus, every waiver case must be examined in light of its particular facts and circumstances.

³ The Department sent Respondent three notices regarding the salary overpayment debt dated February 17, 1998, March 30, 1998, and August 8, 1998. The Department also sent a March 13, 1998 letter stating that the debt amount of \$619.68 was calculated by the Department's payroll contractor.

⁴ Effective June 8, 2005, OHA was delegated waiver authority over salary overpayment claims against current and former Department employees. Pending cases predating OHA's waiver authority were not automatically transferred to the tribunal.

⁵ In a letter dated June 10, 2007, Respondent filed a statement with the Department's Office of the Chief Financial Office, which paralleled her April 9, 2007 request for waiver. This June 10, 2007 statement was forwarded to the tribunal.

⁶ An erroneous payment of pay (i.e. a salary overpayment) is created by an administrative error in the pay of an employee in regard to the employee's salary. See 34 C.F.R. Part 32 (2004). The fact that an administrative error created an overpayment does not relieve the overpaid person from liability. See *In re Robert*, Dkt No. 05-07-WA, U.S. Dep't of Educ. (July 8, 2005), footnote # 12.

⁷ See *In re Danielle*, Dkt. No. 05-18-WA, U.S. Dep't of Educ. (October 11, 2005).

⁸ See *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005).

Respondent filed three statements in response to each of the three debt notices sent to her back in 1998. In a February 21, 1998 letter to the Department's human resources office, Respondent acknowledged the validity of the debt, but stated that the debt amount should be reduced by \$100.24 to \$519.44. Respondent also stated that she was willing to pay this reduced amount once the bill was reissued for the correct amount. On April 6, 1998, Respondent reiterated what she stated in her February 21, 1998 letter. On August 12, 1998, Respondent filed a written request for waiver. In her request, Respondent stated that there still is a discrepancy in the amount of the debt because she is owed \$100.24 for six hours of annual leave, and that any debt she owes should be offset by this amount.⁹ Respondent also stated that this overpayment is the result of administrative error.

In her April 9, 2007 waiver request, Respondent once again asks that this debt be waived because she had no reason to recognize this amount as an erroneous payment. Respondent argues that because the Department failed to act on her waiver request, her ability to pursue her waiver request has been negatively impacted by this significant delay. According to Respondent, she no longer has any copies of pay stubs or other documents to support her waiver request and her recollection of the circumstances surrounding the overpayment has dimmed. She also explains that because nine years have passed, she believed her waiver request had been granted and she considered this matter closed. Respondent next argues that her financial circumstances have changed due to her status as a single parent. Consequently, Respondent asserts that repayment of this debt would be financially burdensome.

In applying the fault standard to this case, the tribunal concludes that Respondent does lack fault. Nine years ago, the Department failed to adequately respond to Respondent's correspondence regarding this debt. The Department's repeated notices in 1998 did not acknowledge the substance of Respondent's previous correspondence and merely reiterated that a valid debt existed. Finally, while allowing Respondent's waiver request to languish for many years, the Department sent her a duplicate debt notice and BoC in March 2007. In the intervening nine years, Respondent was under the misimpression that the matter was resolved due to the Department's failure to act on her waiver request. Moreover, due to the passage of time, the tribunal is persuaded that she is now at a significant disadvantage in pursuing her waiver request.

The tribunal's *In re Catherine*¹⁰ decision is instructive here. In *Catherine*, the Department failed to act on the employee's waiver request for five years. In the interim, she moved and no longer had any documentation regarding the circumstances surrounding the overpayment. Consequently, the tribunal found the fault standard was met because the five-year delay had a detrimental impact on her ability to pursue her waiver request.

In the case-at-bar, the lengthy delay in resolving Respondent's waiver request has significantly impacted her ability to pursue her request. The tribunal accepts Respondent's assertions that she no longer has documentation regarding this matter and that her recollection of

⁹ The Department's March 27, 2007 duplicate Bill of Collection asserts that it reduced the debt amount by a six-hour lump sum leave payment (\$108.54) owing to Respondent. The \$615.06 amount of the debt in this duplicate bill, however, came in at almost the same amount as the original \$619.68 debt because the Department billed the gross debt amount (i.e. did not take any deductions for taxes, retirement expenses, etc.). In the original February 17, 1998 Bill of Collection, \$103.92 was deducted for these expenses.

¹⁰ Dkt. No. 05-26-WA, U.S. Dep't of Educ. (December 12, 2005).

events surrounding this overpayment has diminished. Moreover, at this point, Respondent cannot reasonably be expected to have known this matter was not resolved and that the overpayment still existed given the nine years of inactivity in this case. In view of the following facts, Respondent cannot be held accountable at this point for the consequences of the Department's failure to timely process her waiver request.

Equity and Good Conscience Standard

The tribunal next must consider whether collection of a debt would go against equity and good conscience. To secure equity and good conscience, the debtor must have acted fairly without fraud or deceit, and in good faith.¹¹ In waiver proceedings generally, there has not been abundant guidance on how to balance equity and/or appraise good conscience.¹² 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; and whether collection of the debt would impose an undue financial burden. The tribunal has held that if the circumstances in any case are as consistent with honesty and good faith as with dishonesty, the inference of honesty should be drawn.¹³

Respondent raises an equitable argument that her ability to pursue her request for waiver has been compromised by the Department's inaction.¹⁴ The Department's significant delay in resolving Respondent's waiver request harmed her ability to pursue her appeal. The tribunal also has held that a delay of seven years or more is excessive beyond what would be customary or expected to resolve a waiver request in a debt collection action.¹⁵ Here, the delay amounts to nearly nine years. Moreover, the tribunal is persuaded that Respondent's circumstances have changed and that repayment of this debt would constitute a financial hardship. Therefore, the tribunal finds that collection of the debt would be against equity and good conscience.

¹¹ See 5 U.S.C. § 5584 and *In re Veronce*, *supra*.

¹² See generally, *In re Veronce*, *supra* and *In re Cynthia*, Dkt. No. 05-06-WA, U.S. Dep't of Educ. (September 14, 2005).

¹³ See *In re Veronce*, *supra*.

¹⁴ See *In re Catherine*, *supra*. See also, *In re Kenneth*, Dkt. No. 06-52-WA, U.S. Dep't of Educ. (December 12, 2006) and *In re Joan*, Dkt. No. 06-49-WA, U.S. Dep't of Educ. (January 25, 2007).

¹⁵ See *In re Cheryl*, Dkt. No. 05-28-WA, U.S. Dep't of Educ. (February 17, 2006) (holding that over seven years - - or nearly eight - - is beyond what would be customary or expected to resolve a waiver request).; and *In re Jay*, Dkt. No. 05-25-WA, U.S. Dep't of Educ. (April 18, 2006). ("It must be regarded that a seven-year delay in adjudicating a waiver request doubtlessly is detrimental to a debtor's interests.")

ORDER

Respondent requested waiver of the entire debt. Having found that the circumstances of this case do conform to the threshold factors warranting waiver, Respondent's request for waiver of the \$619.68 overpayment is **GRANTED**.

So ordered, this 21st day of June 2007.

A handwritten signature in black ink that reads "Greer Hoffman". The signature is written in a cursive style with a large, sweeping flourish at the end.

Greer Hoffman
Waiver Official