



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

HOLLY,

Docket No. 07-127-WA
Waiver Proceeding

Respondent

DECISION ON STATUTE OF LIMITATIONS

On June 21, 2007, the tribunal received Respondent's request for waiver of a **\$519.47** salary overpayment debt. For the reasons that follow, the tribunal concludes that waiver of the debt is warranted. Accordingly, Respondent's request for waiver is granted.

In adjudicating this case, the tribunal's findings and conclusions are based on matters accepted as argument and evidence, including: a copy of a statement dated July 11, 1997 by Respondent,¹ a copy of an undated notice of debt letter, and a copy of a Bill of Collection (BoC) dated June 3, 1997.

DISCUSSION

The Secretary of the U.S. Department of Education delegated waiver authority involving all former and current employees of the agency to the OFFICE OF HEARINGS & APPEALS (OHA),² which, thereby, exercises waiver authority on behalf of the Secretary. The undersigned is the authorized Waiver Official who has been assigned this matter by OHA.³ Jurisdiction is proper

¹ For reasons unknown, the agency took no dispositive action on Respondent's case until on June 21, 2007, when Respondent's case was transferred to the Office of Hearings & Appeals for resolution.

² The agency's policy is set forth in the U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, June 2005 (revised Dec. 2006)).

³ See, 5 U.S.C. § 5584(b) (noting the authority held by the authorized official in waiver cases).

under the Waiver Statute at 5 U.S.C. 5584.⁴

Determining whether waiver is appropriate requires consideration of two factors; namely, (1) whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment.⁵

As a preliminary matter, a question presented by this case is whether an employee of the Department of Education (Department) should be granted waiver of a debt arising from an erroneous salary payment in a case that was transferred to OHA more than 10 years after the Department's right to collect the debt by administrative offset first accrued. This issue arises because the Debt Collection Improvement Act of 1996⁶ bars Federal agencies from carrying out an administrative offset⁷ against a debt that exceeds the statute's 10-year statute of limitations (SOL).⁸ Specifically, pursuant to 31 U.S.C. 3716(e) (1), an agency's authority to collect a claim by administrative offset dissolves when the claim: "has been outstanding for more than 10 years."

Salary overpayments are governed, in part, by 31 U.S.C. § 3716 (former employee overpayments) and 5 U.S.C. § 5514 (overpayments to current employees). Although, unlike 31 U.S.C. § 3716, section 5514 contains no explicit SOL. Even so, by its terms, section 5514 incorporates "the standards promulgated pursuant to section [] 3716...of title 31 or in accordance with any other statutory authority for the collection of claims of the United States." To this end, the Office of Personnel Management (OPM), which provides guidance to Federal agencies on debt collection procedures, has issued government-wide regulations that recognize the applicability of a 10-year statute of limitations for administrative offsets under both 5 U.S.C. § 5514 and 31 U.S.C. § 3716.⁹ Similarly, this guidance is consistent with the Federal Claims and Collections Standards (FCCS).¹⁰ FCCS are debt collection standards prescribed by the Department of Justice and the Department of the Treasury,¹¹ and under FCCS all administrative offsets under the Debt Collection Act are subject to a 10-year SOL.¹² Accordingly, the tribunal concludes that a waiver request transferred to OHA more than 10 years after the Department's right to collect the debt by administrative offset exceeds the statute of limitations.

⁴ See, General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828 (the Waiver Statute); U.S. Government Accountability Office, *Scope of Waiver Authority*, B-307681 (May 2, 2006).

⁵ See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

⁶ Pub.L. No. 104-134, April 26, 1996, 110 Stat. 1321). See also, *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 1 & n. 1 (setting forth, more fully, the legal framework governing salary overpayment debt collection, including the Department's procedures).

⁷ An *administrative offset* is a means of debt collection whereby funds payable by the United States are withheld or deducted from a current pay account to satisfy a debt owed by the payee. See, 5 C.F.R. § 550.1103 and 31 C.F.R. § 285.7.

⁸ It is worth noting that the SOL in section 3716(e) is pertinent to the debt collection means of an administrative offset pursuant to the Debt Collection Act ; the statute explicitly provides no bar to an agency's lawful authority to collect a debt through other lawful means - - whatever they may be.

⁹ See, 5 C.F.R. Part 550, Subpart K.

¹⁰ 5 C.F.R. § 550.1106.

¹¹ See, 31 C.F.R. ch. IX, Parts 900 – 904 (2000).

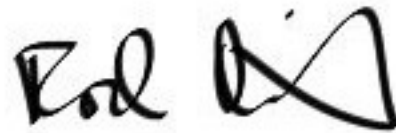
¹² To the extent that there are exceptions to the SOL under the FCCS, none are applicable here.

On the basis of the foregoing conclusion, the tribunal makes the following findings: (1) that the Bill of Collection was issued on June 3, 1997, (2) that Respondent's waiver request was received on July 11, 1997, (3) that Respondent's case was transferred and docketed by the tribunal on June 21, 2007,¹³ and (4) that the Department's right to collect the debt by administrative offset first accrued on June 3, 1997.¹⁴ Guided by these findings, the tribunal concludes that since the SOL operates to dissolve the Department's right to collect Respondent's debt by administrative offset as of July of 2007, which is more than 10 years after the right to collect the debt accrued, waiver of the debt is an appropriate remedy under the circumstances.¹⁵ Moreover, the tribunal is convinced that even if the Department could assert a basis for the extensive delay in resolving Respondent's waiver request, it is doubtful that a delay exceeding 10-years could be deemed reasonable. Indeed, many of the traditional factors of equity in waiver cases under gird the notion of fairness predicated on the adoption of an SOL, including the concerns that over time memories fade, evidence is lost, and the excessive passage of time imposes a burden upon Respondent's capacity to pursue a waiver case. Accordingly, I find that in the interests of the United States waiver should be granted. This decision constitutes a final agency decision.

ORDER

Pursuant to the authority of 5 U.S.C. § 5584, Respondent's request for waiver of the entire debt to the United States Department of Education in the amount of **\$519.47** is **HEREBY GRANTED**.

So ordered this 26th day of February 2008.



Rod Dixon
Waiver Official

¹³ The SOL is tolled the date the case is docketed with the tribunal. It is axiomatic that once a case is docketed within the time allowed by a limitations period, the SOL is no bar to the action no matter how long it takes for the action to proceed to completion. *See, Ewell v. Dags*, 108 U.S. 143 (1883). Since this case was docketed before the 10-year statute of limitations had run, the tribunal cannot dismiss this case exclusively based on the statute of limitations. Nor is the tribunal confident that a dismissal of the case is the appropriate result. Our cases have held that the passage of time closely approximating or exceeding the 10-year statute of limitations is an appropriate factor to be considered in reviewing a request for waiver.

¹⁴ The date the BoC was issued is used since the debt notice was undated.

¹⁵ *Waiver*, among other things, constitutes a "cancellation...of a debt..." 5 C.F.R. § 550.1103.