



UNITED STATES DEPARTMENT OF EDUCATION

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

In the Matter of

KIM,

Docket No. 07-256-WA

Waiver Proceeding

Respondent.

DECISION GRANTING WAIVER

On May 21, 2007, the tribunal received Respondent's request for waiver of a salary overpayment debt in the amount of **\$317.61**. Based on the reasons articulated in this decision, the tribunal finds that waiver of the debt is warranted. Accordingly, Respondent's request for waiver is granted.

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 pay¹ to a federal employee.² 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).³ 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. In adjudicating this case, the tribunal's findings and conclusions are based on matters accepted as argument and evidence, including: a copy of a March 29, 1996 by Respondent

¹ 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.

² 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.

³ The Handbook, ACS-OM-04, was revised and reissued by the Department on March 30, 2007.

regarding the waiver request,⁴ a copy of a notice of debt letter dated March 11, 1996, and a copy of a Bill of Collection (BoC) dated January 8, 1996. This decision constitutes a final agency decision.

Discussion

Waiver of an erroneous payment of pay is an equitable remedy. To secure waiver of an erroneous payment of pay, 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.

As a preliminary matter, a question central to this case is whether waiver is appropriate for a debt arising from an erroneous salary payment in a case transferred and docketed by the tribunal more than 10 years after the Department's right to collect the debt by administrative offset first accrued. This fundamental issue arises because the Debt Collection Improvement Act of 1996⁵ bars Federal agencies from carrying out an administrative offset⁶ against a debt that exceeds the statute's 10-year statute of limitations.⁷ 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 made to former and current federal employees are governed, in part, by 31 U.S.C. § 3716 and 5 U.S.C. § 5514, respectively. While 31 U.S.C. § 3716 explicitly references a 10-year statute of limitations, section 5514's may be inferred. 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." Government-wide regulations issued by the Office of Personnel Management (OPM), which provides guidance to Federal agencies on debt collection procedures, recognized the applicability of a 10-year statute of limitations for administrative offsets under both 5 U.S.C. § 5514 and 31 U.S.C. § 3716.⁸ Similarly, this guidance is consistent with the Federal Claims and Collections Standards (FCCS).⁹ FCCS are debt collection standards prescribed by the U.S. Department of Justice and the U.S. Department of the Treasury,¹⁰ and under FCCS all administrative offsets under the Debt Collection Act are subject to a 10-year statute of

⁴ For reasons unknown, the agency took no action on Respondent's waiver request until May 21, 2007, when Respondent's request was docketed with OHA.

⁵ 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 of Education's (Department) procedures.

⁶ 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.

⁷ It is worth noting that the statute of limitations in section 3716(e) is pertinent only to debt collection by way of an administrative offset pursuant to the statute; the Act also explicitly provides that it is no bar to an agency's lawful authority to collect a debt through other means.

⁸ *See*, 5 C.F.R. Part 550, Subpart K.

⁹ 5 C.F.R. § 550.1106; *see also*, In the Matter of Offset under Statutes Other than Debt Collection Act of 1982, 64 Comp. Gen. 142 (Dec. 14, 1984).

¹⁰ *See*, 31 C.F.R. ch. IX, Parts 900 – 904 (2000).

limitations.¹¹ Accordingly, the tribunal concludes that a waiver case transferred to OHA more than 10 years after the Department's right to collect the debt by administrative offset exceeds the statute of limitations regardless of whether the debtor is a current or former employee.

On the basis of the foregoing conclusion, the tribunal makes the following findings: (1) the Department's right to collect this debt by administrative offset accrued on March 11, 1996, the date it issued its debt notice; (2) Respondent's waiver request was timely filed; and (3) Respondent's case was transferred and docketed by the tribunal on May 21, 2007.¹² Guided by these findings, the tribunal finds that waiver of this debt is an appropriate remedy in this case since the statute of limitations operates to dissolve the Department's right to collect Respondent's debts as of March 12, 2006, which is more than 10 years after the right to collect the debt accrued.¹³ 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 or fair. Indeed, many of the traditional factors of equity identified in waiver cases espouse the same notion of fairness for which statutes of limitations are predicated on, including the sense of fairness arising from concerns that over time memories fade, evidence is lost, and the likely burden imposed on an individual's capacity to pursue their claim or cause. Accordingly, the tribunal finds that collection of the debt would be against equity and good conscience, and not in the best interests of the United States.

ORDER

Pursuant to my authority under the Waiver Statute, 5 U.S.C. § 5584, Respondent's request for waiver in the amount of \$317.61 is **GRANTED**.

So ordered this 16th day of November 2007.



Greer Hoffman
Waiver Official

¹¹ To the extent that there are exceptions to the statute of limitations under the FCCS, none are applicable here.

¹² The statute of limitations 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 statute of limitations is no bar to the action no matter how long it takes for the action to proceed to completion. *See, Ewell v. Dagg*, 108 U.S. 143 (1883).

¹³ *Waiver*, among other things, constitutes a "cancellation...of a debt..." 5 C.F.R. § 550.1103.