



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

WENDY JO,

Docket No. 07-259-WA
Waiver Proceeding

Respondent

DECISION GRANTING WAIVER

On May 21, 2007, the tribunal received Respondent's request for waiver of a **\$2,180.91** 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 notice of debt letter dated December 16, 1999 and a copy of a Bill of Collection (BoC) dated November 19, 1999.¹

DISCUSSION

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

¹ For reasons unknown, the agency took no dispositive action on Respondent's request until on May 21, 2007, when Respondent's case was docketed by the Office of Hearings & Appeals.

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 March 2007)).

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

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 fundamental question presented by 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 basic 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 to former and current employees are governed, in part, by 31 U.S.C. § 3716 and 5 U.S.C. § 5514. Unlike 31 U.S.C. § 3716, section 5514 contains no explicit SOL. By its terms, however, section 5514 incorporates "the standards promulgated pursuant to section [] 3716." To this end, the Office of Personnel Management (OPM), which provides guidance to Federal agencies on debt collection procedures, 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 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)

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 of Education's (Department) 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 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.

⁹ See, 5 C.F.R. Part 550, Subpart K.

¹⁰ 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).

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

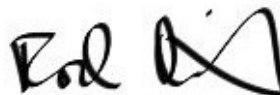
¹² To the extent that there are exceptions to the SOL under the FCCS, none are applicable here.

that the Bill of Collection was issued on November 19, 1999, (2) that the Department's right to collect the debt by administrative offset first accrued on December 16, 1999, (3) that Respondent's case was transferred and docketed by the tribunal on May 21, 2007,¹³ and (4) that Respondent's waiver request was timely filed. Guided by these findings, the tribunal concludes that 8 years have lapsed since the Department's right to collect Respondent's debt first accrued. Notwithstanding 8 years are within the applicable statute of limitations, waiver is an appropriate remedy in this case.¹⁴ Notably, the passage of time in resolving Respondent's waiver request is within a hair of the expiration of the statute of limitations, and, as such, the tribunal is convinced that even if the Department could assert a basis for the extensive delay, it is doubtful that the extensive delay identified here could be deemed reasonable or fair to Respondent. Moreover, the tribunal is mindful of the traditional factors of equity identified in waiver cases, which 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. These factors are certainly applicable here, and underscore the importance and benefit to all parties in the expeditious adjudication of these cases. Accordingly, the tribunal concludes that in equity and good conscience and 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 **\$2,180.91** is **HEREBY GRANTED.**

So ordered this 2nd day of October 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, e.g., Ewell v. Daggs*, 108 U.S. 143 (1883).

¹⁴ *Waiver*, among other things, constitutes a "cancellation...of a debt..." 5 C.F.R. § 550.1103.