



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

Docket No. 07-290-WA

CAROL,

Waiver Proceeding

Respondent.

DECISION GRANTING WAIVER

This proceeding is based on a U.S. Department of Education (Department) employee's request for waiver of an alleged salary overpayment of \$699.97. The 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. The Department has promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *et. seq.*), and set forth policy governing the overpayment process in its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04) (June 2005). These legal authorities prescribe procedures for handling debts, authorizing deductions from wages of federal employees and/or former employees to pay debts to the United States for such things as salary overpayments, and setting 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 replacing the original waiver official who had issued an Order Governing in this matter on June 19, 2007. Resolution of this case is based on the matters accepted as argument, evidence, and/or documentation in this proceeding when considered in their entirety, including the Respondent's statements, the Department's Bill of Collection (BoC) and documents generated by the Federal Personnel Payroll (FPPS). This decision constitutes a final agency decision.

For the reasons that follow, the circumstances of this case do conform to the threshold factors warranting waiver. Therefore, Respondent's request for waiver is granted.

PROCEDURAL HISTORY

On May 15, 2007, the Department's Office of Management (OM) authorized the issuance of an initial notice of salary overpayment that Respondent owed a debt to the Department. The Request for Bill of Collection (RBOC) dated April 25, 2006, states that Respondent left the Department on February 18, 2006 (pay period 200605) for another position at the Social Security

Administration with a negative 15 hours of what was referred to as “religious comp time balance.” The RBOC further asserts that in pay period 199920 Respondent had available a balance of 1 hour but used 8 hours resulting in a negative 7 hours and a resulting overpayment of 7 hours at \$42.71 per hour for an amount of \$298.97. Additionally, it is alleged that in pay period 200322, Respondent used another 8 hours and was paid \$50.83 per hour for another overpayment of \$406.64. The RBOC concludes that Respondent never earned religious comp time to pay off the negative leave balances and therefore owed overpayment amounts of \$406.64 and \$298.97. A timely request for waiver of this alleged debt was filed by the Respondent and the case was assigned to OHA for decision.

DISCUSSION

Respondent argues that much of the above facts are correct but rejects the conclusion that she never earned the religious comp time to pay off the negative balance that resulted in the alleged overpayment of \$699.97. Respondent states that she did earn 15 hours of religious comp time that should have been used to offset the negative balance. The record in this proceeding indicates that Respondent, after receiving the initial notice of overpayment, contacted the Executive Officer of the Office of Special Education and Rehabilitative Services of the Department, where she had been employed, her former supervisor and Paul O’Connell, the timekeeper in her former office to assist her in getting the 15 hours of comp time properly credited to her. These 15 hours were earned in January, 2005 and October, 2005 but were not applied correctly to her negative balance due to clerical/administrative errors and mistakes made by various timekeepers. She was assured by timekeeper Paul O’Connell that he would correct the failure to properly credit her with the 15 hours and that she need not concern herself any further. In support of the effort to be credited with these 15 hours, Respondent submitted numerous signed leave forms and documentation. Despite the assurance of O’Connell and her own efforts, she continued to be unable to have her 15 hours of comp time credited to her. When she was about to leave the Department for her new position at the Social Security Administration, Respondent was again assured by Paul O’Connell and others that the error would be corrected. The record reflects that the first 8 hours of earned comp time was finally credited to her on June 15, 2007 but the additional 7 hours was not despite her efforts and her supervisor’s recollection of meetings she attended which earned her those 7 hours. Respondent continued to try to resolve the failure to credit her with the additional 7 hours but was unsuccessful in part because Department employees were no longer responding to requests to continue searching for supporting documentation once she left for her new position.

I find that the totality of the record reflects that Respondent did everything she could to correct the error to properly credit those 15 hours and that there was no fault on her part to prevent the failure to receive the credited hours which would have covered the improper claim of overpayment.

A waiver proceeding is a narrowly focused proceeding. At issue is whether Respondent’s arguments and submission support a request that a portion or the entire overpayment be waived in accordance with standards prescribed by statute and consistent with the case law and regulations promulgated by the Department. A waiver of claims of the United States against a debtor arising out of erroneous payments of pay is possible only when the collection of the erroneous payment would be against equity and good conscience, and not in the best interests of

the United States. In addition, only when there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the Respondent, or any other persons having an interest in obtaining a waiver may waiver be granted.

The standard for determining whether a waiver is appropriate in salary overpayment cases considers, first, whether the overpayment to Respondent constitutes an *erroneous payment of pay* and, second, whether Respondent lacks fault. As waiver constitutes an equitable remedy, it is not available to a party who is not entirely without fault. I find that the payment of \$699.97 was not an erroneous payment and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the Respondent.

ORDER

Respondent requested a waiver of the claimed debt. Having found that the circumstances of this case conform to the factors warranting waiver, Respondent's request for waiver is **GRANTED.**

Richard I. Slippen
Waiver Official

September 16, 2011