



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

Docket No. 10-02-WA

RICHARD,

Salary Overpayment
Waiver Proceedings

Respondent

DECISION

This proceeding is based on a U.S. Department of Education (Department) employee's request for a waiver of a salary overpayment of \$3,935.96, identified as Debt ID No. M1017600002. This waiver request arose 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. *See also, In re Richard*, Dkt. No. 04-04, U.S. Dep't of Educ. (June 14, 2005). The Department policy governing the overpayment process is set forth in its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04, June 2005 (revised April 2008)). The Handbook specifically delegated the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA). The undersigned is an authorized waiver official who has been assigned this matter by OHA.¹ 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 Respondent's statements and attached documentation, the Department's Bill of Collection (BoC), and documentation generated by the Federal Personnel Payroll System (FPPS). This decision constitutes a final agency decision.

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

PROCEDURAL HISTORY

On June 25, 2010, the National Business Center (NBC) of the U.S. Department of the Interior issued an initial notice of salary overpayment to Respondent in the amount of \$3,539.96. The notice explained that the overpayment was the result of the correction of an erroneous payment by the payroll office. Respondent requested a waiver of this debt on June 29, 2010.

¹ Although the initial processing of this overpayment case began on July 8, 2010, it was reassigned to me on May 23, 2011.

The record in this case consists of two written submissions from Respondent, dated June 29, 2010, and July 20, 2010, a series of e-mail messages between Respondent and payroll personnel in the NBC, and a BoC issued by the NBC. The subject of these submissions is the proper computation of a newly authorized federal civilian employee supplemental payment resulting from the enactment of the Omnibus Appropriations Act, 2009 (Public Law 111-8, March 11, 2009). One of the provisions of that act, entitled “nonreduction in pay while serving in the uniformed services or National Guard,” authorizes the payment of a differential pay to civilian employees if their military pay and allowances while on active duty are less than the civilian pay they would have received during the same period if they were working in their civilian position. The law permits this supplemental payment of that differential pay to the civilian employee for each month the employee-reservist is on active duty, effective prospectively from March 15, 2009.

Respondent was deployed as a reservist from September 2008 until November 2009. When he returned to his civilian job with the Department of Education a payroll program specialist in the NBC began to calculate his differential pay. To do this the specialist requested, and he supplied, copies of military pay records for the relevant period of time. After some discussion as to the effective date of the pay provision, on April 1, 2010, the pay specialist informed him his gross differential pay entitlement was \$5,683.69, and after normal deductions, he would net \$3,935.96. Although there are no explanations in the file to justify the subsequent recalculation of Respondent’s entitlement to this differential pay, in his submissions in support of his request for a waiver Respondent alludes to the existence of the publication of a new NBC policy on differential pay that was signed on March 11, 2010. Apparently this publication reinterpreted previous guidance as to which military allowances were to be included in the computations. Under the new interpretation, more military allowances were included in the total military computation than previously, resulting in the determination that Respondent’s military pay and allowances exceeded the amount of money he would have received as a civilian federal employee if he had not been placed on active duty. As a result of the application of this new guidance, in June 2010 it was concluded he was not entitled to any differential pay, and the money he had received was improper and constituted an overpayment.

Respondent does not contest the validity of this calculation, but requests this overpayment claim be waived because of the financial hardship this recovery would impose on him. He also requests that I take into consideration that in April 2010 both he and the payroll specialist believed he was entitled to this payment, and there is a complete absence of fraud or other misconduct on his part. Respondent explains that his hardship argument is based upon his recent signing of a purchase contract for a house and his planned use of this payment as part of the down payment. Further, Respondent says that a requirement that he reimburse the Department for this money may not only jeopardize the purchase of the house, but will have an adverse affect on his ability to make the monthly mortgage payments.

DISCUSSION

The waiver of a debt in a salary overpayment case is appropriate 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, there must be an absence of a finding 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. *See In the Matter of David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (July 22, 2005).

In this case there is clearly an absence of a finding of fraud, misrepresentation, fault, or lack of good faith on Respondent's part. The overpayment arose because of apparent initial confusion by NBC regarding the interpretation and application of the new legislation authorizing the differential pay to reservists. The initial determination of eligibility was not the fault of either Respondent or the payroll specialists calculating the entitlement. Respondent relied upon the representations of NBC personnel and after receiving the funds made financial decisions which included the use of the differential pay he received to sign a contract to purchase a house. It would create a significant financial hardship on Respondent to require him to reimburse the Department for these funds. For all these reasons, waiver of this debt would not be against equity or good conscience. Accordingly, Respondent's request for a waiver of this debt should be granted.

ORDER

Under authority of 5 U.S.C. § 5584, Respondent's request for waiver of the entire debt to the U.S. Department of Education in the amount of \$3,935.36 is **HEREBY GRANTED**.

So ordered this 16th day of June 2011.

Judge Richard F. O'Hair