UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
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In the Matter of

FAITH ,

Respondent

Docket No. 10-04-WA
Waiver Proceeding

DECISION DENYING WAIVER

At issue in this case is whether an employee of the Department of Education (Department) should be granted waiver of a debt arising from an overpayment of salary occurring as a result of the Department's failure to properly deduct a total of **$1,023.62** in Federal Employees Group Life Insurance (FEGLI) premiums from his pay. For reasons that follow, I find that waiver of the debt is unwarranted. Accordingly, Respondent's request for waiver is denied.

The OFFICE OF HEARINGS & APPEALS (OHA)[1] maintains authority and jurisdiction to waive[2] claims of the United States against a former or current employee of the Department.[3]

[1] The Department'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)).

[2] *Waiver* is defined as "the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee as [provided] by 5 U.S.C. 5584…or any other law." 5 C.F.R. § 550.1103.

[3] *See also*, General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828 (codified at 5 U.S.C. 5584) (the Waiver Statute). The law of debt collection is extensive. *See, e.g.*, *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 statutory framework governing salary overpayment debt collection); *see also* 5 U.S.C. § 5514 and 31 U.S.C. § 3716 (these statutory sections constitute significant provisions of the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, April 26, 1996, 110 Stat. 1321). The Department's overpayment procedures may be found on the Office of Hearings & Appeals website at: www.ed-oha.org/overpayments/.

The undersigned is the authorized Waiver Official who has been assigned this matter by OHA.[4] In a waiver proceeding, the debtor acknowledges the validity of the debt, but argues that he or she should not be required to repay the debt on the basis of equitable circumstances connected to the debt as well as because there is no indication of fraud, misrepresentation, fault, or lack of good faith by Respondent or anyone else having an interest in obtaining a waiver of the claim.[5] In the submission requesting waiver, the debtor is expected to: (1) explain the circumstances of the overpayment, (2) state why a waiver should be granted, (3) indicate what steps, if any, the debtor took to bring the matter to the attention of the appropriate official or supervisor and the agency's response, and (4) identify all the facts and documents that support the debtor's position that a waiver should be granted.

The record in this case comprises what I have accepted in evidence, including: a copy of a written statement by Respondent, dated October 13, 2010, and a copy of a Bill of Collection (BoC) issued on October 5, 2010.

DISCUSSION

I.

Under the Federal Employees' Group Life Insurance (FEGLI), most Federal employees, including part-time employees, are eligible for basic life insurance coverage. The payroll office deducts premiums from an employee's pay to cover the employee's share of the cost of basic insurance. Employees may also elect optional coverage by completing a standard form (SF-2817); employees pay the full cost of optional insurance.

Respondent argues that the Department mistakenly dropped her FEGLI coverage and that at no time did she indicate that coverage was or should be waived or dropped. According to Respondent, she paid $508.00 for a debt issued on May 18, 2010 that arose under similar circumstances of the current debt. As such, Respondent argues that the current debt should be waived because she should not be "held responsible twice for the Department's mistakes." When questioning why she was being held responsible for the error in her FEGLI payroll deductions, Respondent indicates that she was told that she had a duty to "ensure all deductions are taken out appropriately." Respondent appears to recognize the pertinence of what she was told, but argues that "is totally unfair that [she is] being asked again to pay for a mistake in which [she] had no involvement."

There is no dispute that Respondent owes the Department $1,023.62, however, Respondent argues that the circumstances of this case warrant waiver of the debt. The standard for determining whether waiver of a debt is appropriate requires a consideration of two factors; namely, (1) whether there is no indication of fraud, misrepresentation, fault,[6] or lack of good

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

[5] Under waiver decisions issued by the Comptroller General interpreting 5 U.S.C. § 5584, "pay" has been held to include "nonpay" or nonsalary compensation, which covers recruitment bonuses, accrual of annual leave, health and life insurance premiums, retention allowances, and all forms of remuneration in addition to salary. *See*, U.S. Government Accountability Office, *Scope of Waiver Authority*, B-307681 (May 2, 2006).

[6] In this respect, since fault can derive from an act or a failure to act, fault does not require a deliberate intent to deceive.

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.[7] Respondent must satisfy both factors to obtain a waiver.

The resolution of this matter begins with an analysis of the fault standard. Although *fault* is often used in a conventional sense to refer to blunder, mistake or responsibility, *fault*, as the term is used in the Waiver Statute and in accordance with factor (1) above, has specialized and particular meaning. Rather than its conventional use, fault is examined in light of the following considerations: (a) whether there is an indication of fraud; (b) whether the erroneous payment resulted from an employee's incorrect, but, not fraudulent, statement that the employee under the circumstances should have known was incorrect;[8] (c) whether the erroneous payment resulted from an employee's failure to disclose to a supervisor or official material facts in the employee's possession that the employee should have known to be material; or (d) whether the employee accepted the erroneous salary payment, notwithstanding that the employee knew or should have known the payment to be erroneous.[9]

In support of her request for waiver, Respondent argues that she should be granted a waiver because she repaid an earlier debt and is unfair to hold her responsible for the Department's error. It is true that salary overpayments often, if not always, involve some type of error by the agency; however, the application of the fault standard operates to impose a statutory duty on the employee/debtor to seek correction of the erroneous payment regardless of the government's mistake. Hence, the administrative error by the government cannot, itself, entitle an employee to waiver.[10] No employee has an entitlement to pay that he or she obtains as a result of an overpayment.[11]

Despite the undeniably frustrating aspect of experiencing payroll errors, fault, as the term is used in the Waiver Statute, is examined in the context of an employee's duty to prevent or discover mistakes and errors in salary payments when doing so is feasible. This duty comports with the employee's unique ability to know of the antecedents that may give rise to changes in pay that could result in erroneous payments as well as the fact that the employee is often in the best position to recognize a mistake in his or her pay. Employees are not only often informed of a personnel action that affects pay before the pay change is implemented (e.g., promotions, pay increases, monetary awards or bonuses), but it is often the employee who initiates a change in status that results in a pay change (e.g., change in FEGLI coverage, health benefit coverage, or a change in a retirement benefit). As such, the employee is uniquely able to scrutinize the

[7] *See In re Richard,* Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005).

[8] Under the fault standard, the scope of Respondent's duty extends to include the obligations to: (1) verify bank statements and/or electronic fund transfers of salary payments, (2) question discrepancies or unanticipated balances from salary payments, and (3) set funds aside for repayment when appropriately recognizing a salary overpayment. *See*, *In re William*, Dkt. No. 05-11-WA, U.S. Dep't of Educ. (October 19**,** 2005). As such, in a waiver proceeding, the debtor must either acknowledge the validity of the debt or urge the absence of any reason to recognize the salary payment at issue as an overpayment. *Id.*

[9] *See generally, Guidelines for Determining Requests* U.S. Department of the Treasury Directive 34-01 (2000), *available at* http://www.treasury.gov/regs/td34-01.htm; Standards for Waiver, 4 C.F.R. § 91.5 (2000).

[10] *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 15, 2005).

[11] *Id.*

subsequent pay change for erroneous under *or* over payments, and alert the employer to potential errors in pay.

To determine whether proper FEGLI deductions are being made, an employee may check with human resource officials, check for indications of deductions on the Leave and Earning Statement (LES), or check their most recent Standard Form 50, *Notification of Personnel Action.*[12] There are no facts in the record showing why Respondent could not recognize the error in her FEGLI deductions. Notably, the Department's failure to make FEGLI deductions increased Respondent's pay each pay period. Respondent offers no reason why she failed in her duty to attempt to resolve the erroneous salary payments as soon as she knew or should have known of the error. In light of the aforementioned, I find that Respondent has not satisfied the requisites of the fault standard. Accordingly, in the interests of the United States, waiver of Respondent's debt cannot 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 **$1,023.62** is **HEREBY DENIED.**

So ordered this 19th day of November 2010.

Rod Dixon
Waiver Official

[12] On that form, in block 27, there is a 2-character code that represents an employee's current coverage and a definition of the code. For example, if block 27 shows "C0 - Basic only," that means the employee has Basic life only with no optional coverage. *See* The FEGLI Handbook, the *SF50s Equivalents of Insurance Codes* at: http://www.opm.gov/forms/pdfimage/sf50.pdf