



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

SARAH,

Docket No. 11-07-WA
Waiver Proceeding

Respondent

DECISION DENYING WAIVER

On February 7, 2011, the tribunal received Respondent's submission requesting waiver of a debt in the amount of **\$3,498.22**. For the reasons that follow, the tribunal concludes that waiver of the debt is not warranted. Accordingly, Respondent's request for waiver is denied.

In adjudicating this case, the tribunal's findings and conclusions are based on matters accepted as argument and evidence, including: a copy of a bill of collection (BoC) dated January 25, 2011 and a copy of a short statement, dated February 7, 2011, from Respondent indicating the circumstances of the overpayment.

DISCUSSION

The waiver authority involving all former and current employees of the agency was delegated to the OFFICE OF HEARINGS & APPEALS (OHA),¹ 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.² Jurisdiction is proper under the Waiver Statute at 5 U.S.C. 5584.³

¹ 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 April 2008)).

² See, 5 U.S.C. § 5584(b) (noting the authority held by the authorized official in waiver cases).

³ 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).

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.⁴ Respondent must satisfy both factors to obtain a waiver.

The basis of the debt in this case is the Department's conclusion that a cash award totaling \$3,788.00⁵ was erroneously paid to respondent effective the 26th pay period of 2010. Respondent received the cash award because the award was erroneously processed for her instead of the intended recipient, who is Respondent's mother - - an employee in a different office of the Department with the same surname.

Respondent argues that waiver is warranted because she recognized the overpayment and immediately alerted the proper officials to the overpayment. Despite Respondent's prompt attention to correcting the erroneous payment, Respondent received a BoC over one month later. The cash award to Respondent's mother was delayed by at least one month, which is the time it took the Department to correct the error. Respondent also notes that she paid taxes on the overpayment that could not be recovered by the Department because the cash award was processed in the last pay period of 2010.⁶

On the basis of the foregoing, the tribunal makes the following findings: (1) that Respondent's waiver request was timely filed; (2) that Respondent's mother, who shares the same surname as Respondent, was the intended recipient of the cash award, (3) that Respondent timely verified her bank statement and electronic fund transfer showing an unanticipated balance from a salary payment, and disclosed the erroneous payment to an appropriate Department official; and (4) that there is no indication of fraud in this case. Guided by these findings, the tribunal concludes that Respondent undoubtedly complied with her duty to bring the overpayment to the attention of an appropriate official and seek correction of the erroneous payment regardless of the government's blunder in creating the overpayment. Respondent's persistent efforts constitute conduct that is consistent with an employee's duty to resolve an erroneous salary payment as soon as she knows of the error.

Beyond the aforementioned, Respondent's statement includes no argument why, in the interests of equity and fairness, this debt should be waived. Instead, Respondent focuses steadfastly upon her position that she recognized the overpayment and immediately alerted the proper officials to the overpayment so that the error could be corrected. Even so, Respondent's submission sheds no revealing light upon why it is against equity and good conscience for the Federal government to recover the overpayment. Clearly, the fact that an administrative error by the government caused an employee to be paid in excess of the employee's lawful rate of pay

⁴ See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

⁵ The net amount is \$3,498.22.

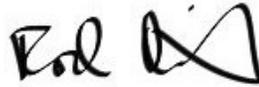
⁶ Included in Respondent's request for waiver is her request that the Department waive the amount of Federal taxes deducted from her pay on the basis of the erroneous cash award.

does not, itself, entitle an employee to waiver.⁷ More directly, Respondent makes no showing that collection of the debt would impose an undue financial burden; nor has she shown that she has relinquished a valuable right or changed her position based on the overpayment in a manner that renders recovery of the claim unconscionable under the circumstances. Accordingly, I have no choice, but, to conclude that in the interests of the United States collection of the erroneous payment should not be waived. 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 **\$3,498.22** is **HEREBY DENIED.**

So ordered this 5th day of May 2011.

A handwritten signature in black ink, appearing to read "Rod Dixon", is written above a horizontal line.

Rod Dixon
Waiver Official

⁷ *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 15, 2005).