



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

JOSHUA,

Docket No. 11-26-WA
Waiver Proceeding

Respondent

DECISION GRANTING WAIVER

On April 20, 2011, the tribunal received Respondent's request for waiver of a **\$36.00** 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 Personnel Action (SF-50) dated February 13, 2008 and a copy of a short statement, dated April 20, 2011, from Respondent indicating the: (1) circumstances of the overpayment and (2) the reasons why Respondent believes a waiver should be granted.

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

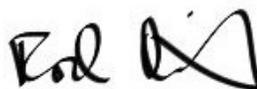
The basis of the debt in this case is the Department's conclusion that on January 24, 2007, Respondent received transit benefits in the amount of \$100.00 for use in commuting to work from February 2007 thru April of 2007. On March 3, 2007, the Department's records indicate the Respondent ended his tour of duty with the Department. In light of the fact that Respondent separated from the Department prior to the end of April 2007, Respondent's transit benefit constitutes a salary overpayment which must be repaid to the Department unless waived.

Respondent argues that waiver is warranted because he was employed with the Department's Office of Safe & Drug Free Schools until February 16, 2008. In support of his position, Respondent submits a copy of a Notice of Personnel Action indicating that his date of termination of employment is February 16, 2008. On the basis of the foregoing, the tribunal makes the following findings: (1) that Respondent was employed with the Department from February 2007 thru April of 2007, (2) that Respondent ended his tour of duty with the Department on February 16, 2008, and (3) that Respondent's waiver request was timely filed. Guided by these findings, the tribunal concludes that the debt should be canceled and that waiver is an appropriate remedy in this case.⁵ Accordingly, 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 **\$36.00** is **HEREBY GRANTED**.

So ordered this 26th day of April 2011.



Rod Dixon
Waiver Official

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

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