



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

PAUL,

Docket No. 11-29-WA
Waiver Proceeding

Respondent

DECISION DENYING WAIVER

On May 19, 2011, the tribunal received Respondent's request for waiver of a **\$55.00** debt. 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 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.¹ 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, which includes: a copy of Respondent's Federal Employee Transit Benefit Certification Form, a copy of Respondent's Flexible Schedule Certification Form for pay period ending July 7, 2007, a copy of the Bill of Collection and debt letter sent to Respondent, and a copy of a short statement, dated May 12, 2011, from Respondent indicating the: (1) circumstances of the overpayment and (2) the reasons why Respondent believes a waiver should be granted.

¹ 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).

DISCUSSION

The waiver authority involving all former and current employees of the agency was delegated to the OFFICE OF HEARINGS & APPEALS (OHA),² 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.³ Jurisdiction is proper under the Waiver Statute at 5 U.S.C. 5584.⁴

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.⁵

The basis of the debt in this case is the Department's determination that in the pay period ending July 7, 2007, Respondent used transit benefits in the amount of \$55.00 after the end of Respondent's tour of duty with the Department, which was on July 3, 2007. Therefore, Respondent's \$55.00 final transit benefit constituted a salary overpayment that must be repaid to the Department unless waived.

Respondent argues that waiver is warranted because the ultimate goals of an employee public transit benefit program were achieved, notwithstanding that he used his transit benefit funds after retirement. In Respondent's view, by using the transit benefit for public transportation he contributed to the decrease in traffic congestion, air pollution and greenhouse gases, and since these environmental concerns constitute the ultimate purpose of the transit benefit program, collection of his debt would not only defeat the purpose of the program, but be punitive. Respondent also asserts that collection of the debt is against good conscience because the \$55.00 debt "is practically one half of one day's pension... [which] is substantial to me."⁶

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. It is clear from the facts of this case that Respondent had a clear duty to verify that, given his planned retirement, his use of employee transit benefits post-retirement would be consistent with program requirements. This duty is imposed on Respondent because, as an employee, Respondent is uniquely able to determine whether he was erroneously overpaid transit benefits. This follows because the overpayment applied to a pay period in which Respondent's self-selected final days

² 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)).

³ See, 5 U.S.C. § 5584(b) (noting the authority held by the authorized official in waiver cases).

⁴ 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).

⁵ See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

⁶ Respondent is retired and receives an annual pension totaling \$46,672.00.

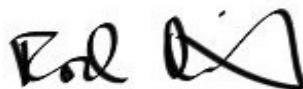
of employment constituted only two days of the pay period. The fact that Respondent recognized that he possessed unused transit benefits after his separation from the Department demonstrates that he was in a position to alert the Department to the overpayment. Therefore, I conclude that Respondent accepted and used the transit benefits at issue notwithstanding that he knew or should have known that he was in possession of an overpayment.

In light of the aforementioned, the tribunal finds that Respondent's arguments and evidence fall short of establishing that he satisfied the requisites of the fault standard.⁷ Accordingly, in the interests of the United States, waiver should not 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 **\$55.00** is **HEREBY DENIED**.

So ordered this 25th day of August 2011.



Rod Dixon
Waiver Official

⁷ To the extent that Respondent raised arguments bearing on the equities of collecting the transit benefit overpayment from a former employee in retirement, those arguments are simply beside the point in this case because I have determined that Respondent knew or should have known that an overpayment existed. *See, e.g., In re Joanne*, Dkt. No. 06-22-WA, U.S. Dep't of Educ. (May 1, 2007).