



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

TAUHIDAH,

Docket No. 11-42-WA
Waiver Proceeding

Respondent

DECISION GRANTING WAIVER

On June 10, 2011, the tribunal received Respondent's request for waiver of a **\$220.00** 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 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, including: a copy of a Power of Attorney, a financial statement, a copy of the Bill of Collection and debt letter, and a copy of a short statement, dated June 27, 2011, from Respondent indicating the: (1) circumstances of the overpayment and (2) the reasons why Respondent believes a waiver should

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).

be granted.

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 conclusion that as of October 23, 2007, Respondent received transit benefits in the amount of \$220.00 for use in commuting to work from December 2007 thru January 30, 2008; however, Respondent's tour of duty with the Department ended on November 30, 2007. In light of the fact that Respondent separated from the Department prior to the end of January 2008, the Department determined that Respondent's final transit benefit constituted a salary overpayment which must be repaid to the Department unless waived.

Respondent's representative argues that waiver is warranted because Respondent, due to illness, was unaware of the excessive transit benefit payments. Respondent suffered from a debilitating illness that impaired her cognitive skills as well as her physical ability to undertake routine activities. As a result, Respondent retired, and is currently receiving care at a long-term care facility. Due to the illness, Respondent's cognitive skills have deteriorated; it is unlikely that Respondent understood she received excessive transit benefit payments at the time of her retirement. 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. It is clear from the facts of this case that Respondent was not uniquely able to scrutinize her transit benefit payments to determine whether she was erroneously overpaid and alert the Department to the errors in payment.

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).

The remaining question is whether Respondent has demonstrated that it is against equity and good conscience for the Federal government to recover the debt in this case. To secure a favorable ruling on the equity standard, Respondent must show that he has acted fairly, without fraud or deceit, and in good faith with regard to all matters concerning the overpayment. In addition, although there are no rigid rules governing the application of equity, I must balance equity and appraise good conscience in light of the particular facts of this case; in doing so, I must balance the competing interests in the recovery of all debts owed to the United States against Respondent's asserted interests in the forgiveness of a debt owed to the United States. Factors weighed in this balancing of interests include the following: whether the debt is substantial; whether recovery of the claim would be unconscionable under the circumstances; whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; and whether collection of the debt would impose an undue financial burden.

Respondent argues that it is against equity to collect the overpayments because the overpayments were caused by the Department's error and repayment will impose an undue financial burden. To underscore the significance of the financial burden that would be imposed, Respondent indicates that repayment of this debt would create a financial hardship in light of her long-term care expenses, which exceed her current retirement income. According to Respondent, she is currently in arrears for payments covering some of her long-term care expenses, and repayment of an additional debt would exacerbate her weakened financial circumstances. In support of her position, Respondent submits a copy of a recent long-term care billing instatement showing Respondent's costs and monthly billing for nursing services as well as the amount of arrears owed. Respondent also submits a recent bank statement showing monthly deposits from Respondent's retirement account.

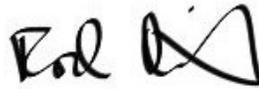
On the basis of the foregoing, the tribunal makes the following findings: (1) that Respondent received transit benefit funds in the amount of \$220.00 for use in commuting to work from December 2007 thru January 30, 2008, (2) that Respondent ended her tour of duty with the Department on November 30, 2007, and (3) that Respondent's waiver request was timely filed. Guided by these findings, I am convinced that there are significant factors supporting Respondent's request for waiver, including Respondent's asserted current financial problems that would be exacerbated by a requirement that Respondent repay this debt. Moreover, in light of the deterioration of Respondent's cognitive skills at the time she retired, I find no basis from the evidence in the record to conclude that Respondent was aware that she was overpaid transit benefits. Accordingly, I find that in the interests of the United States Respondent's request for waiver should be granted.⁶ This decision constitutes a final agency decision.

⁶ *Waiver*, among other things, constitutes a "cancellation...of a debt..." 5 C.F.R. § 550.1103.

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 **\$220.00** is **HEREBY GRANTED**.

So ordered this 15th day of July 2011.

A handwritten signature in black ink, appearing to read "Rod Dixon", with a stylized flourish at the end.

Rod Dixon
Waiver Official