



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

PATRICK,

Respondent

Docket No. 11-79-WA

Waiver Proceeding

DECISION GRANTING WAIVER

On November 15, 2011, the tribunal received Respondent's request for waiver of the interest on a \$2,886.24 debt accrued as a result of payroll deductions paid by the Department on Respondent's behalf for coverage of Respondent's health benefits. For the reasons that follow, the tribunal concludes that waiver of interest 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 Respondent's signed enrollment form for health coverage from Blue Cross Blue Shield, and copies of statements received from Respondent in November and December 2011 indicating the: (1) circumstances of the overpayment and (2) the reasons why Respondent believes a waiver of interest 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

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)).

Official who has been assigned this matter by OHA.² Jurisdiction is proper under the Waiver Statute at 5 U.S.C. 5584.³

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 in October 2011, Respondent was enrolled in a Federal Health Benefit plan for which the Department's payroll office did not deduct Respondent's share of his health insurance premium from his biweekly pay. The total unpaid premium constitutes a debt owed by Respondent for which he agrees to repay. Respondent, however, argues that it is punitive to require him to pay interest on the debt since he was unaware of the overpayment. The overpayment appears to be the result of a processing error by Blue Cross Blue Shield.

In support of his position, Respondent asserts that a representative, John Castillo, of the Department's payroll services provider at the U.S. Department of Interior, National Business Center advised Respondent to seek waiver of any interest. In addition, according to Respondent, Shandra Whiting, a human resources representative of the office of Federal Student Aid, "apologized for the error and stated that [the debt] was not [his] fault." On the basis of the foregoing, the tribunal makes the following findings: (1) that Respondent was covered by the Department's Federal Health Benefit during 2010 and 2011, (2) that the Department did not make payroll deductions for the Federal Health Benefit coverage due to an error by Blue Cross and Blue Shield, the Department did not deduct from Respondent's pay his health care premium, and (3) that Respondent alerted his human resources representative to the error as soon as he was informed by Blue Cross Blue Shield of the error. Guided by these findings, the tribunal concludes that the payment of interest on the debt would exacerbate Respondent's repayment of the debt, 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 of interest payments should be granted. This decision constitutes a final agency decision.

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).

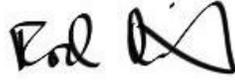
⁴ See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

⁵ To be clear, repayment of the \$2,886.24 debt is NOT waived. The actual amount of interest subject to collection has not been identified by Respondent or the Department.

ORDER

Pursuant to the authority of 5 U.S.C. § 5584, Respondent's request for waiver of *interest* on the \$2,886.24 debt to the United States Department of Education is **HEREBY GRANTED**.

So ordered this 15th day of March 2012.

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

Rod Dixon
Waiver Official