



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF HEARINGS AND APPEALS  
400 MARYLAND AVENUE, S.W.  
WASHINGTON, D.C. 20202-4616

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In the Matter of

**PAUL,**

**Docket No. 11-90-WA**

Waiver Proceeding

Respondent.

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**DECISION GRANTING WAIVER**

Respondent, a U.S. Department of Education (Department) employee, requested waiver of a \$6,045.30 salary overpayment debt arising from the Department's incorrect processing of the transfer action initiating his employment with the agency. Based on the reasons articulated in this decision, I find that waiver of this debt is warranted. Accordingly, Respondent's request for a waiver is granted.

**Jurisdiction**

Respondent's waiver request arises under 5 U.S.C. § 5584, authorizing the waiver of claims of the United States against debtors as a result of an erroneous payment of pay to a federal employee.<sup>1</sup> The Department promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *seq.*) and its *Handbook for Processing Salary Overpayments* (Handbook) (January 2012), specifically delegated the exercise of the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA).<sup>2</sup>

The undersigned is the authorized waiver official who has been assigned this matter by OHA. Resolution of this case is based on the matters accepted as argument, evidence, and/or documentation in this proceeding when considered as a whole, including the December 12, 2011 Notice of Debt Letter and Bill of Collection, Respondent's December 28, 2011 initial request for waiver, Respondent's January 26, 2012 statement and attached documentation, and a January 11,

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<sup>1</sup> See General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), October 19, 1996, 110 Stat. 3828; see also *In re Tanya*, Dkt. No. 05-34-WA, U.S. Dep't of Educ. (April 18, 2006) at 1, n.1.

<sup>2</sup> The Handbook initially was issued in 2005 and has been revised twice. Information regarding the Department's salary overpayment process including the latest edition of the Handbook is available on OHA's website at: [www.ed-oha.org/overpayments](http://www.ed-oha.org/overpayments).

2012 recommendation for granting the waiver filed by Robert Buggs, Chief Human Capital Officer.

According to the December 12, 2011 Notice of Debt Letter and attached Bill of Collection, the \$6,045.30 overpayment concerns Pay Periods 9 through 24 of 2011. The overpayment arises from the Department's incorrect processing of Respondent's transfer action to the agency. Respondent began his employment with the Department in April 2011. Prior to his lateral transfer from another agency, Respondent was paid at the GS-15, step 2 level; however, Respondent's salary level was incorrectly processed and he was paid at the GS-15, step 5 level when he started work at the Department.

### **Discussion**

Waiver of an erroneous salary payment is an equitable remedy available only when there is no indication of fraud, misrepresentation, fault, or lack of good faith by the debtor (fault standard).<sup>3</sup> The debtor also must demonstrate that collection of the debt would be against equity and good conscience, and not in the best interests of the United States. At issue in this instant proceeding is whether Respondent's arguments and submissions support a request that a portion or the entire erroneous salary overpayment be waived.

In waiver cases, the fault standard has specialized and particular meaning. "...[f]ault is examined in light of the following considerations: (a) whether there is an indication of fraud; (b) whether the erroneous payment resulted from an employee's incorrect, but not fraudulent, statement that the employee under the circumstances should have known was incorrect; (c) whether the erroneous payment resulted from an employee's failure to disclose to a supervisor or official material facts in the employee's possession that the employee should have known to be material; or (d) whether the employee accepted the erroneous salary payment, notwithstanding that the employee knew or should have known the payment to be erroneous."<sup>4</sup>

An erroneous salary overpayment is created by an administrative error in the pay of an employee in regard to his or her salary.<sup>5</sup> Typically, the administrative error is caused by the agency. However, the mere fact that the government caused the error does not negate an employee's duty to seek correction of the erroneous payment.<sup>6</sup> Moreover, notwithstanding the government's mistake, the error cannot itself entitle an employee to a waiver because no employee has an entitlement to pay that he or she obtains as a result of an overpayment.<sup>7</sup>

In his January 26, 2012 statement, Respondent states that he did not recognize he was being paid at an incorrect salary level due to his adjustment of his tax withholdings at the time he began his employment with the Department. Respondent states that he made this adjustment to

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<sup>3</sup> See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (December 12, 2005).

<sup>4</sup> See *In re Robert (Robert)*, Dkt. No. 09-10-WA, U.S. Dep't of Educ. (November 19, 2009) at 2.

<sup>5</sup> See 34 C.F.R. Part 32 (2011).

<sup>6</sup> See *Robert* at 3.

<sup>7</sup> See *id.*

decrease his tax withholdings due to receiving a large refund on his 2010 taxes. Consequently, this adjustment would result in him receiving more money in his paychecks than he was paid at his prior agency. In November 2011, Respondent states that when he didn't receive his anticipated step increase to the GS-15, step 3 level, he scrutinized his leave and earning statements more thoroughly and noticed that he was being paid at the GS-15, step 5 level. Respondent states that he immediately brought this to the attention of Michael Blaylock, Division Chief, Headquarters Client Services, who investigated the matter. According to Respondent, Mr. Blaylock informed him that the processing of pay is manually completed and that it was inputted incorrectly at the start of Respondent's employment with the Department. Respondent also states that Mr. Blaylock informed him that Human Capital and Client Services (HCCS) missed the error even with multiple levels of review and approval in the pay process.

Respondent argues that he should be granted a waiver because he has been forthcoming in his attempts to rectify the overpayment and that the error was not due in part to any of his actions. Respondent asserts that there was no fraud, misrepresentation, fault or lack of good faith on his part. Additionally, Respondent claims that had he not brought this error to the attention of HCCS, the error most likely never would have been caught and he would have continued to be paid at the higher rate. Respondent argues that his actions show his honesty and integrity and a willingness to see the error corrected. Respondent further argues that collection of the debt also would go against equity and good conscience because he acted to bring the error to the Department's attention and because collection of the debt would cause an undue financial hardship. Respondent explains that paying the \$6,045.30 debt would cause extreme financial distress for his family.

The tribunal finds in certain limited circumstances where an employee otherwise is not at fault, an employee's conduct in timely and conscientiously reporting an erroneous salary overpayment does not disqualify him from meeting the fault standard. In the tribunal's decision, in *Robert*,<sup>8</sup> an employee was paid his full civilian pay despite an absence from work due to a military deployment. The employee recognized the salary overpayment and reported the error to the Department. In granting the waiver, the tribunal found that the erroneous overpayments did not stem from a failure to disclose material facts in the employee's possession. The tribunal further noted that the employee's conduct was consistent with his duty to resolve an erroneous salary overpayment.

In another decision, *In re Edward (Edward)*,<sup>9</sup> an employee's locality pay was erroneously set for a different locality, which resulted in the employee being compensated at a higher pay rate. The employee noticed the error and immediately reported it to the Department. As in *Robert*, the tribunal noted that the error did not stem from the employee's failure to disclose material facts in his possession; in fact, the employee reported that his official duty station was incorrectly identified and requested that the Department determine if this resulted in an erroneous calculation of his locality pay. In granting the waiver, the tribunal found that the employee that Respondent did not accept erroneous locality payments that he knew or should have known to be erroneous. The tribunal also found that the employee's actions were consistent with his duty to alert the

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<sup>8</sup> Dkt. No. 09-10-WA, U.S. Dep't of Educ. (November 19, 2009).

<sup>9</sup> See *In re Edward*, Dkt. Nos. 10-05-WA, 11-15-WA, U.S. Dep't of Educ. (March 17, 2011).

Department of an erroneous salary overpayment as soon as he knew that the payment was erroneous. Consequently, in both *Robert* and *Edward*, the employees' actions in reporting salary overpayment errors did not vitiate their ability to otherwise meet the fault standard.

In applying the fault standard to this case, the tribunal finds that Respondent lacks fault. The tribunal notes that the erroneous overpayment did not result from Respondent's fraudulent conduct nor from Respondent's failure to disclose material facts related to the overpayment. Indeed, once Respondent recognized he was being paid at an incorrect level, he contacted HCCS to inform the Department of the error. I find reasonable Respondent's failure to recognize that he was receiving more salary than he was entitled due to his contemporaneous adjustment to his tax withholdings at the start of his employment with the Department. Thus, Respondent did not question the increased money he was receiving in his paycheck; in point of fact, he expected to see such an increase. Moreover, I find Respondent's conduct consistent with an employee's duty to resolve an erroneous salary overpayment as soon as he knows of the erroneous compensation as required by the fault standard. The tribunal also notes that in the recommendation submitted by Mr. Buggs, he notes that Respondent was not aware of the error regarding his personnel action and is not in a position to be knowledgeable about pay setting regulations and policies.

To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.<sup>10</sup> There are no rigid rules governing the application of the equity and good conscience standard. The tribunal must balance equity and/or appraise good conscience in light of the particular facts of the case.<sup>11</sup> Factors weighed by the tribunal include the following: 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.<sup>12</sup>

The tribunal notes that Respondent acted fairly and in good faith in reporting the error once he became aware of it. The tribunal also notes that Mr. Buggs has stated that Respondent would be unfairly impacted by the administrative error. Finally, the tribunal also accepts that collection of the debt would pose an undue financial burden upon Respondent. Consequently, the tribunal finds that collection of the debt would go against equity and good conscience.

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<sup>10</sup> See 5 U.S.C. § 5584 and *In re Anh-Chau*, Dkt. No. 05-01-WA, U.S. Dep't of Educ. (June 17, 2005) and 5 U.S.C. § 5584.

<sup>11</sup> See *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (December 14, 2005); *In re Cynthia*, Dkt. No. 05-06-WA, U.S. Dep't of Educ. (September 14, 2005).

<sup>12</sup> See *id.*

**ORDER**

Respondent requested waiver of the entire debt. Having found that the circumstances of this case conform to the threshold factors warranting waiver, Respondent's request for waiver of the entire debt is GRANTED.

So ordered, this 8th day of March 2012.

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Greer Hoffman  
Waiver Official