



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of
APRIL,

Docket No. 12-23-WA
Waiver Proceeding

Respondent

DECISION DENYING WAIVER

This proceeding is based on a U.S. Department of Education (Department) employee's request for waiver of a salary overpayment of \$9047.47 based on two Bills of Collection (BoC).¹ This case emerges out of a request arising under a statute- the General Accounting Office Act of 1996 – authorizing the waiver of claims of the United States against debtors as a result of an erroneous payment of pay to a federal employee.² Respondent, a former employee of the U.S. Department of Education (Department), filed a timely request for waiver³ of a debt caused by an erroneous salary overpayment. The legal authorities pertinent to this waiver request draw from the aforementioned statute, the Department's implementing regulations at 34 C.F.R. Part 32 (§ 32.1 *et seq.*), and the policy set forth in the Department of Education, Administrative Communications System, *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04) (revised January 2012). Taken together, these authorities prescribe procedures for processing debts, authorizing deductions from wages to pay debts, and setting standards for waiving

¹ The overpayment is identified as File No.12070850783 and No.12210850783 referenced in the invoice of Oct. 18, 2011, with breakdown of the pay periods and leave applied.

² General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828 (5 U.S.C. § 5584); *see also In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at footnote 1 (setting forth the statutory framework governing debt collection by salary and administrative offset).

³ *Waiver* is defined as "the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee as [provided] by 5 U.S.C. 5584...or any other law." 5 C.F.R 550.1103.

those debts when appropriate.⁴ The Handbook, ACS-OM-04, specifically delegates waiver authority involving all former and current employees of the Department to the Office of Hearings and Appeals (OHA), which, thereby, exercises waiver authority on behalf of the Secretary. The undersigned is the authorized waiver official who has been assigned this matter by OHA.⁵ 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 Respondent's statements, the Department's Bill of Collection (BoC), documents generated by the Federal Personnel Payroll System (FPPS), and Leave and Earnings Statements for Respondent for multiple pay periods covering all of 2010 and the first 8 of 2011. This decision constitutes a final agency decision.

For reasons that follow, the circumstances of this case do not conform to the threshold factors warranting waiver. Therefore, Respondent's request for waiver is denied.

PROCEDURAL HISTORY

The Bill of Collections (BoC) issued to Respondent state the basis of the overpayment as: The employee's debt was the result of a correction processed by the payroll office for pay periods 2011 (01), 2011(03), 2011(04), 2011(02) and 2010(26) resulting in a net amount of \$8783.76, and of a further correction adjustment processed by the payroll office for pay periods 2010(26) and 2010(25), resulting in a net amount of \$257.79. The corrections were processed in pay periods 2011 (15) & (16) respectively. The first amount for the 5 designated pay periods was identified by an August 2, 2011 invoice with the following breakdown: Used Annual Leave (-12 hours), Advanced Sick Leave (-226 hours); and, the second amount for 2 designated pay periods was by August 18, 2011 invoice with the breakdown: Advanced Sick leave (-6 hours). The dollar amounts were computed on Respondent's hourly rate of \$46.93, as shown by LES documents. The BoCs which total \$9047.47 were issued by Naomi Sanchez, Debt Management Coordinator, Human Resources Services. Respondent filed a timely appeal on September 2, 2011, seeking a waiver.

On October 18, 2011 the Office of Chief Financial Officer (OCFO) sent Respondent an invoice listing the two overpayment amounts with August 2nd and August 18th dates seeking repayment with the caveat if appeal was approved to disregard this notice. Respondent faxed in materials to OHA in support of her waiver request on November 14, 2011 including copies of the October 18, 2011 (setting forth the debt amounts), a Doctor's letter to finalize volunteer leave share process and accommodations for medical condition dated Dec. 6, 2010, a Medical Release form for Respondent's supervisor, dated Jan. 5, 2011; and Respondent's LES for pay period 16 (07/30/2011) which highlights over 300 hours of LWOP used and 48 leave share hours used.

⁴ In addition to regulations promulgated by the Department, standards prescribed by the Department of Justice and the Department of Treasury govern administrative debt collection efforts; those standards are widely known as the Federal Claims Collection Standards (FCCS). *See* 31 U.S.C. § 3711 (2000) and 31 C.F.R. ch. IX, Parts 900 – 904 (2000).

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

Respondent's appeal was assigned to an initial waiver official in late 2011 and after receipt of additional submissions from her and her spouse, the appeal was subsequently reassigned to the current waiver official, who issued an Order Governing Proceedings (OGP) on March 30, 2012. In the OGP, Respondent was advised that on or before April 20, 2012, Respondent should file a short statement explaining the circumstances of the overpayment to the best of her knowledge, state why she believes a waiver should be granted, identify steps taken to bring the matter to attention to agency officials, and explain with reasonable specificity all the facts, documents, and sworn statements which support respondent's position. On April 20, 2012, Respondent requested an extension until May 7, 2012, to allow additional time to gather information in support of her waiver request. Respondent's one page extension request discusses difficulties in dealing with the Department's Performance Management Group (PMG) for privacy and personally identifiable information (PII) release concerns in Respondent and her spouse dealings with the PMG staff which oversees the voluntary leave share program. Respondent's request for extension was granted and, on May 7, 2012, Respondent files a two page narrative response with attachments. Respondent's attachments included: Application to Become a Leave recipient Under Volunteer Leave Transfer Program (OPM 630 form)⁶, Medical Certifications (December 6, 2010), Work Life Group approval email (Dec. 20, 2010), LES for pay periods 4-21 and 22-26 for 2010 and pay periods 1-8 in 2011. In addition, Respondent submitted tax and employment info to show her retirement status since February 2011⁷.

On May 14, 2012, a statement was received from the PMG staff, Joyce Robertson, showing the donated leave balances Respondent had received while in the shared leave program. Ms. Robertson stated: "Ms. [redacted] received an email to her and her supervisor informing her of donated leave balances. April [redacted]'s donated hours were used for the following pay periods. She had a total of 48 hours donated. In pay period 1022, she used 12 hours; in pay period 1023, she used 2 hours, in pay period 1024, she used 20 hours, in pay period 1025, she used 10 hours, in pay period 1102, she used 4 hours." On May 17, 2012, the waiver official contacted respondent to verify Respondent had this record, to review and respond if she wishes, and gave Respondent until May 25, 2012 to do so. On May 25, Respondent set in a reply inclusive of her spouse's response, which she confirmed as true and correct. Respondent confirms that 48 hours were credited. Specifically, Respondent says,..."The payroll office provided corrected T/A information but we are not familiar with the leave codes. We can only confirm that 48 total hours were donated based on LES information but not the pay periods that were affected. We do not have records of emails providing donated leave balances during the period of [Respondent's] participation in the volunteer leave share program."

⁶ PMI 630-1 Voluntary leave Transfer Program at V.C, Information for Employee, specifies (4) all annual and sick leave balances on your Leave and Earnings Statement will be incorrect from the beginning of the emergency to the termination of the emergency. Therefore, you should contact your timekeeper to verify your current leave balances.

⁷ Respondent's resignation date was February 26, 2011. A completed SF-50, with approval date of 2/28/2011, required action codes, position description, employee data, with necessary approvals/electronic signature notation is in the file and corresponds with this Notification of Personnel Action (Resignation).

In sum, BoC documents, inclusive of invoices, FPPS screen documents with original T & As, corrected T & As, and a View-Leave Share Recipient List (at PG11MA, PG11S1), the PMG summary of leave donation hours, Respondent's SF-50 Notification of Personnel Action, Nature of Action: Resignation (Code 317), and Respondent's submissions, inclusive of LES statements⁸ constitute the complete record upon which the decision in this case is based.

DISCUSSION

A waiver of claims against a debtor arising out of erroneous payments of pay is possible only when the collection of the erroneous payment would be against equity and good conscience and not in the best interests of the United States. Since, only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the Respondent, or any other persons having an interest in obtaining waiver may waiver be granted in a salary overpayment case. See *In re Catherine*, Dkt No. 05-26-WA, U.S. Dep't of Educ. (Dec. 12, 2005). At issue is whether Respondent's arguments and submission support a request that a portion or the entire erroneous salary overpayment be waived. Under 34 C.F.R. Part 32, an erroneous salary overpayment is created by an administrative error in an employee's pay in regard to his or her salary. The Department's error arises from its failure to properly account for the Respondent's leave share account causing corrections in Respondent's leave balances, resulting in her owing the debt that is the focus of this case.

The overpayment the Department seeks to collect from Respondent reflects salary paid for the final two pay periods in 2010 and the for the first four pay periods of 2011. Respondent resigned her position in February 2011 and HR verifies, with a completed SF-50, the exact date was February 26, 2011.

The Bill of Collection (BoC) issued to Respondent states the basis of the overpayment as: The employee's debt was the result of a correction processed by the payroll office for pay periods 2011 (01), 2011(03), 2011(04), 2011(02) and 2010(26) resulting in a net amount of \$8783.76, and of a further correction adjustment processed by the payroll office for pay periods 2010(26) and 2010(25), resulting in a net amount of \$257.79. The first amount for the 5 designated pay periods was identified by an August 2, 2011 invoice; and, the second amount for 2 designated pay periods was by August 18, 2011 invoice. FPPS original time sheets(T & A Screens) were included with the BoC notices as part of the transferred bill information and show leave codes and when advanced leave was applied. FPPS screen on the Leave Share Recipient list shows 48 donor hours which hours came in during PP 2010(22) and 2011(02). FPPS leave codes as further identified in the Pay Codes Manual.⁹

⁸ LES submitted Nov. 14, 2011, March 29 & 30, 2012, May 25, 2012, are part of the record here.

⁹ Time and Attendance Pay Codes Manual shows that Pay Code 010 is for Regular Time which covers ...the days of an administrative workweek (a weekly tour of duty) that constitute(s) an employee's regularly scheduled administrative workweek; Pay Code 101 is for Leave Without Pay (LWOP); code 050 is for Holiday Pay. See, NBC, Payroll Operations Division, DOI (Manual, September 2003); Leave Share Medical (LS1) appears in Pay Codes under WebTA (time & attendance system).

Respondent submitted her application for the leave share program, OPM 630 form, on December 13, 2010. On that form she lists the date the medical emergency began as: 02/01/10 with the date the medical emergency ended (or is expected to end) as 03/15/11. On that form, at #12, she lists her current leave balances as follows: Annual leave (6); sick leave (-72). At #13, she notes a total of 15.3 as LWOP hours she had used for this medical emergency. The nature and severity of the medical emergency is attested to in a one page, letter signed by Dr. [redacted], dated December 6, 2010. For personally identifying information (PII) and privacy reasons, the nature of the medical condition will not be further discussed here. The Doctor statement is part of the record to show Respondent met the requirements of approval for the leave share recipient program.

The voluntary leave share program, run by OM's PMG Group, with Stacey O'Hara and Joyce Robertson, as staff representatives, submitted a document showing approval of Respondent's acceptance under the program with the following specification, as a one page document, with the attached OPM 630 form reflecting the supervisor's signature and dated December 14, 2010. On December 20, 2010, the Voluntary Leave Transfer Program Approval was sent in memo form to Respondent, as a one page document. Under Subject line: Approval of Your Leave Recipient Application, it reads:

"I am pleased to inform you that we have approved your request to become a leave recipient under the Voluntary Leave transfer Program. *The effective date of the medical emergency is October 3, 2010 and the ending date is October 5, 2011* (with a 120-day extension to allow recipient to liquidate Leave without pay (LWOP) or advance leave deficit balance). Extended time may be provided with additional/updated medical documentation and supervisory approval.¹⁰"

Respondent supplied, individually or with her husband's assistance, multiple LES submissions (after-the-fact information) to show what her leave balances were for pay periods for all of 2010 and PP 1-8 in 2011. Respondent supplies these to reconstruct the time when she believed the leave share should have been applied. Respondent maintains the outstanding leave and associated debt were accrued while she was designated a volunteer leave share recipient dealing with an ongoing chronic medical condition. Respondent and her spouse repeatedly contend that she was placed on volunteer leave transfer status starting in February 2010 (PP 4 of 2010). While February 2010 was the retroactive asking date for her to be placed on the leave share program, it was not the approval date for Respondent to become a leave share participant. As we have seen, she was only designated a recipient as of October 3, 2010 and she affirms this in her May 7th filing to this tribunal. In noting the approved dates as October 3, 2010 through October 5, 2011, she asserts that transferred annual leave may be retroactively substituted for

¹⁰ The notice then explains how the program works: "Other employees may now transfer annual leave to your leave account by sending a completed leave donation form to the Work/Life Programs Branch. All transferred leave will be used to cover the unpaid absence caused by the emergency described in your application. Upon termination of the emergency, any unused transferred annual leave shall be restored to the donors." /s/ Joyce A. Robertson, Program Support Assistant, U.S. Department of Education.

periods of LWOP, or used to liquidate indebtedness for advanced annual or sick leave granted on or after the beginning of the medical emergency period.

Respondent outlines that during her employment she a long history of medical troubles, chronic medical condition, having reasonable accommodations in place and then removed. However, we are limited in this inquiry to the cause and effect of her being an approved leave share participant for a specific time and we cannot reach a decision on facts and matters that are not before us in this waiver matter.

A waiver proceeding is a narrowly focused proceeding; at issue is whether Respondent's arguments and submissions support a request that a portion or the entire overpayment be waived in accordance with standards prescribed by statute and consistent with the case law and regulations promulgated by the Department. A waiver of claims of the United States against a debtor arising out of erroneous payments of pay is possible only when the collection of the erroneous payments would be against equity and good conscience, and not in the best interests of the United States. In addition, only when there is no indication of fraud, misrepresentation, fault, or lack of good faith by Respondent, or any other persons having an interest in obtaining waiver, may waiver be granted.

The standard for determining whether waiver is appropriate requires consideration of two threshold matters: first, whether the overpayment to Respondent constitutes an *erroneous payment of pay*¹¹ and, secondly, whether Respondent lacks fault.¹² As waiver constitutes an equitable remedy, it is not available to a party who is not entirely without fault.¹³

Fault Standard

The fault standard is not limited to acts or omissions indicating fraud, misrepresentation or lack of good faith by a debtor. Fault is determined by assessing whether a reasonable person should have known or suspected that he or she was receiving more than his or her entitled salary.¹⁴ In assessing the reasonableness of a debtor's failure to recognize an overpayment, the tribunal may consider the employee's position and grade level, newness to federal employment, and whether an employee has records at his or her disposal, which would indicate a salary overpayment.¹⁵ Respondent here is a Grade 13, with over six years of service according to her comp. service date, and as discussed more fully below had records at her disposal.

¹¹ An erroneous salary overpayment is created by an administrative error in the pay of an employee in regard to the employee's salary. *See also*, Salary Offset To Recover Overpayments of Pay or Allowances From Department of Education Employees, 34 C.F.R. Part 32 (2004) (notwithstanding the caption for Part 32, the agency regulations apply with equal force to former and current employees).

¹² The fact that the Agency may have erred in making the overpayment does not relieve the overpaid person from liability. More precisely, since an overpayment is presumptively in excess of the amount of authorized salary, the issuance of a BoC initiates the government's fight to recover an excess amount.

¹³ See DOHA Case No. 02040401 (May 21, 2002).

¹⁴ See *In re Tammy*, Dkt. No. 05-20-Wa, U.S. Dep't of Educ. (November 9, 2005).

¹⁵ See *In re Veronc*, Dkt. No. 05-14-WA, U.S. Department of Educ. (July 22, 2005).

In a waiver proceeding, the debtor acknowledges the validity of the debt; consequently, issues regarding the existence or the accuracy of debt are not before the tribunal. Respondent acknowledges the validity of the debt, as stated in her waiver request as filed in September 2011, and as supplemented in May 2012. To the extent that Respondent's arguments or defenses raise any issues concerning the validity of the debt, they will not – because they cannot – be addressed in this proceeding.

There is no dispute that this case involves an “erroneous payment of pay.” The nature of the debt in this case involves overpayment of salary for the specified pay periods which totaled \$9047.47. When Respondent resigned her position on February 26, 2011, this abruptly ended her participation in the leave share program.

Respondent had a duty to inspect her Leave and Earnings Statements (LES) for the applicable period and by doing that she would have seen the leave share donations as credited to her account, see for example 28 hours credited for PP 2011(2) under the LVSHRM heading. Her LES on her resignation date (2/26/2011) showed a negative sick leave balance of -161 hours. An employee has a duty to inspect and verify his/her leave and earnings statements. While the accuracy of annual and sick leave balances on the LES could be in flux when on leave share, an employee is cautioned to contact his/her timekeeper to verify current leave balances. A major sick leave shortfall of -161 hours puts an employee on notice that a salary overpayment exists, likely a substantial one at the employee's hourly pay rate. There is no showing by Respondent that she contacted her timekeeper on this deficit leave situation to mitigate the debt consequences at any time. Respondent failed to meet this duty and must be held to be at fault.¹⁶

Respondent makes the presumption that the Department did not adjust her leave balances properly with the donations she was eligible to receive while in the leave share program. Respondent says she had to retire as a result of the deficit leave hours she was accruing. Respondent's decision to resign, when and how she did, is relevant to this waiver matter in terms of how a reasonable person would act in the presence of a leave deficit/shortfall. With a leave deficit when approved on December 20th her resignation a mere two months later depletes any correction time for a leave shortfall. In the context of overpayments, her abrupt resignation would exacerbate the existing leave shortfall problem.

In accordance with the Federal Employees Leave Sharing Act of 1988, the Department adopted a Voluntary Leave Transfer Program in 1989.¹⁷ Under this program, Department employees may transfer part of their unused accrued annual leave to other federal employees having medical or family medical emergency situations. Generally, a recipient may use transferred leave in the same manner and for the same purpose as if he

¹⁶ See, *In the Matter of Ray E. Lundquist*, Dkt. No. D2003-105 (U.S. Department of Interior)(June 21, 2004) (holding that when an employee fails to review documentary records, including leave and earnings statements, which if examined, would have shown the overpayment, the employee is not free from “fault” as that term is used in the statute.)

¹⁷ See Federal Employees Leave Act, Pub. L. 100-566, 5 C.F.R. Part 630 and U.S. Dep't of Educ. Personnel Manual Instruction, Voluntary Leave Transfer Program—Administrative Procedures, PMI 630-10 (Oct. 2, 1989).

or she had earned and received approval to use the leave with the exception that during each pay period a leave recipient is affected by the medical emergency, he or she shall use any accrued annual and/or sick leave before using transferred leave.¹⁸ Transferred annual leave may be retroactively substituted for periods of LWOP or used to liquidate a debt for advanced annual or sick leave granted on or after the date fixed by the Department as the beginning of the medical emergency for which LWOP or advanced leave was granted.¹⁹ A recipient's leave share account is closed when the basis for the employee's eligibility is no longer present.²⁰ Any unused transferred leave remaining in the recipient's leave share account must be restored to the original leave donors.²¹

In applying the fault standard to this case, the tribunal concludes that Respondent is at fault. Although Respondent claims she did not know when leave share hours were applied and to what pay periods, her insistence that her approval in the leave share program goes back to February 2010 and that retroactive leave adjustments can go back to that time is in error. It does not. Specifically, Respondent's May 7, 2012 response, acknowledges the effective dates of her medical emergency were set between October 3, 2010 and October 5, 2011, based on her supervisor's approval and the email issued by the Work/Life Group (under PMG). Respondent's acknowledgment here is at odds with any claim that her *approved* medical emergency time began in February 2010, a full 8 months earlier. As such, this eliminates the February—September period as open to any donations. This critical fault precludes her reliance on cases with favorable waiver treatment, See *In re G.N.*, Dkt. No. 08-11-WA, U.S. Dep't of Educ. (Feb. 24, 2009); *In re Mary Jane*, Dkt. No. 06-82-WA, U.S. Dep't of Educ. (Dec. 15, 2006). When Respondent applied on December 13th, she supplied the information of already having a sick leave deficit of (-72 hrs), an annual leave balance of (6 hrs) and an LWOP balance of (15.3 hrs). Leave donations could and were made with retroactive application to PP 22 (12 hrs), PP 23 (2 hrs), PP 24 (20 hrs), PP 25 (10 hrs), yet that would not clear the already existing deficit, and assuming Respondent kept accruing leave deficits, she would be able to identify by LES examination or by consulting with her timekeeper, how much leave debt she was accruing.

Arguably, Respondent had to have been aware of her need to repay leave that she was behind in and had not earned when she resigned February 26, 2011. If she did not have a full awareness; it would be demonstrable by examining her LES paper trail. Moreover, Respondent herself submitted an LES for PP 01/2011 (Reissue) with her May 7, 2012 filing, which was similarly included in her May 25, 2012 filing, still showing an Advance of sick leave in the amount of 48 hrs with a leave credit of 49 hours. Likewise, LWOP of 73 hrs and AWOL of 80 hrs is shown. At the bottom of the LES, the words appear: leave adjustment processed this pay period.

In applying the threshold factors to this case, the tribunal concludes that Respondent is not without fault in that she would be aware she was receiving more than she was entitled to and had no reasonable expectation of obtaining sufficient leave share donations to clear her record, prior to resigning on February 26, 2011. In her May 25, 2012 filing in response to Joyce Robertson's leave donation totals (48 hours), Respondent

¹⁸ See 5 C.F.R. Sec. 630.909 and 630.907.

¹⁹ See 5 C.F.R. Sec. 630.906(e).

²⁰ See 5 C.F.R. Sec. 630.909.

²¹ See 5 C.F.R. Sec. 630.910

agrees that 48 hours were donated based on the LES information but not on the affected pay periods, and asserts she does not have records of emails providing donated leave balances during her leave share program participation. An employee has a duty to monitor both her leave and earnings statements (LES) and her bank statements to verify their accuracy.²² An employee could also seek an audit of her leave balances for accuracy. Respondent's failure to recognize that an overpayment occurred, or was likely to occur because of her abrupt resignation, is unreasonable.

Finally, under the circumstances of non-entitlement to salary for advanced leave resulting from unworked hours, Respondent did not acquire title to the excess amount, and has a duty to hold the money for eventual repayment. This is a basic principle of waiver case law.²³

II. Equity and Good Conscience

To secure equity and good conscience, Respondent must have acted fairly and without fraud and deceit as to the controversy at issue. Beyond that framework, however, there is actually little guidance on the balance of equities or the appraisal of good conscience.²⁴

In balancing the equities, tribunals have drawn upon the concept of fairness by exercising judgment in light of the particular facts of the case. In this regard, a number of factors have been found pertinent to determining whether collection of the claim against an employee is against equity and good conscience or otherwise not in the best interests of the United States. For enumeration of these factors, see *In re Anh-Chau*, Dkt. No. 05-04-WA (June 17, 2005), which includes, whether recovery of the claim would impose an undue financial burden upon the debtor under the circumstances.

There is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not tantamount to showing a financial burden such that the equities call for waiver. Admittedly, Respondent is and has been separated from the Department since February 2011, however, that fact does not equate to or establish she now has a financial hardship. Respondent did not make a financial hardship argument except to say that she sought waiver of her debt as her health has prevented her from maintaining employment since her separation from ED in February 2011. She offers tax information (W-2 and 2011 Worksheet) to verify her unemployment since then. Respondent's explanation is an assertion but lacks proof as to the reasons for

²² Reliance on bank statements may have delayed employee in knowing that a situation was present which could lead to an overpayment under the circumstances of Respondent's expectations and may hamper an employee in taking prompt action. See DOHA Case No. 98081701 (August 21, 1998), when an employee is provided information by the government which indicates an error, she is generally considered to be at fault if she fails to review the information and bring it promptly to the attention of the proper authority.

²³ See, e.g., DOHA Case No. 02032601 (May 31, 2002), which relies on 5 U.S.C. § 5584, stating that waiver is precluded when an employee is aware that he is being overpaid. The employee does not acquire title to any excess payments merely because the government has committed an administrative error. He has the duty to hold the overpayment for the eventual repayment to the Government.

²⁴ See, *In re Anh-Chau*, Dkt. No. 05-01-WA (June 17, 2005) at footnote 17, which explores the phrase "against equity and good conscience."

the unemployment. Representations are not proof and there is no ability to fill blanks in with assumptions. Whether medical treatment continues or not does not prove employability or incapacity. There is simply no persuasive evidence in this record to show how repayment of this debt would be a financial hardship. Notwithstanding the tribunal's March 30th Order Governing Proceedings urging Respondent to "fully identify and explain with reasonable specificity all the facts, documents, and sworn statements, if any, which Respondent believes supports her position," Respondent did not do so. In fact, Respondent did not provide supporting evidence that may substantiate a living condition of hardship and economic distress by repayment of this debt. Possible ways of supporting such a claim would be information about other financial indebtedness, depleted savings, and debilitating expenses for support of self and family members. When she asserts that she was forced to resign because of not having leave to cover absences this shows a difficult situation but does not conform to a financial hardship showing.

Lacking evidence to support the claim that repayment would be a financial hardship, this leaves the tribunal unable to weigh factors favorably for Respondent in the balance of equity and good conscience. Although Respondent failed to make a financial hardship case, the fact the repayment amount exceeds \$9,000, the tribunal recognizes that collection of the debt could be taxing and for that reason, recommends that Respondent and the Department explore extended repayment options.²⁵ Specifically, the tribunal notes that an extended voluntary repayment schedule plan as provided for by 5 U.S.C 5514(a)(2)(C) would more appropriately take into account Respondent's situation and non-working status. Nonetheless, based on the record and my review I must conclude Respondent has *not shown* that it would not be in the best interest of the United States to require her to repay this debt.

CONCLUSION

The tribunal finds that Respondent should have known that an error in salary payment existed; as such, waiver cannot be granted in this case. FURTHER, the tribunal finds that the interests of equity and good conscience do not otherwise warrant waiver in this case. Respondent's request for waiver must be denied.

ORDER

Respondent requested waiver of the entire debt. Having found that the circumstances of this case do not conform to the threshold factors warranting waiver, Respondent's request for waiver is **DENIED**.

So ordered this 11th day of July, 2012.



Nancy S. Hurley
Nancy S. Hurley
Waiver Official

²⁵ Respondent should contact Ms. Sanchez, as issuer of the BoC, to explore that option.

