



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS

In the Matter of

J,

Respondent.

Docket No. 14-12-WA

Waiver Proceedings

DECISION GRANTING WAIVERS

Respondent, a former employee of the Department of Education (Department), has requested a waiver of two debts, for \$4,584.54¹ and for \$1,920.73,² arising from overpayments of salary. These overpayments accrued as a result of errors in Respondent's timesheets that were filled out by Respondent's supervisor while he was on medical-based leave. This matter was initially assigned to another waiver official and was subsequently re-assigned to the current waiver official on September 14, 2015. For the reasons that follow, I find that waiver of the debts is warranted. Accordingly, Respondent's request for waiver of the debts 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 because of equitable considerations 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 the waiver.³ When requesting a waiver, Respondent is expected to: (1) explain the circumstances of the overpayment; (2) state why a waiver should be granted; (3) indicate what steps, if any, Respondent 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 Respondent's position that a waiver should be granted. This decision constitutes a final agency decision.

¹ Debt ID 01660934564.

² Debt ID 93070934564

³ 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 In re T*, Dkt. No. 13-40-WA (Dec. 5, 2013) at 2 n.5.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (OHA),⁴ which, thereby, exercises waiver authority and jurisdiction on behalf of the Secretary of Education to waive⁵ claims of the United States against a former or current employee of the Department.⁶ The undersigned is the authorized Waiver Official who has been assigned this matter by OHA.⁷ Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

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.⁸

PROCEDURAL HISTORY

After more than fifteen year working for the Federal government, Respondent, an information technology specialist, was assigned a new supervisor. Conflicts with that supervisor eventually led Respondent to a six-month period of depression culminating in a psychiatrist diagnosing Respondent with “major depressive disorder” and “posttraumatic stress reaction.” As a result of his psychological challenges, Respondent went on sick leave and eventually was granted disability retirement by the Office of Personnel Management “due to depression and post traumatic stress disorder.” While Respondent was on leave, his supervisor handled Respondent’s time and attendance worksheets. Errors on those time sheets resulted in Respondent being paid salary not owed to him.

⁴ The Department’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, revised January 2012).

⁵ *Waiver* is defined as “the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as [provided] by 5 U.S.C. 5584 . . . or any other law.” 5 C.F.R. § 550.1103 (2014).

⁶ *See* General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), October 19, 1996, 110 Stat. 3828 (codified at 5 U.S.C. § 5584) (the Waiver Statute). The law of debt collection is extensive. *See, e.g., In re Richard*, Dkt. No. 04-04-WA, U.S. Dep’t of Educ. (June 14, 2005) at 1 & n. 1 (setting forth, more fully, the statutory framework governing salary overpayment debt collection; *see also* 5 U.S.C. § 5514 (2012) and 31 U.S.C. § 3716 (2012) (these statutory sections constitute significant provisions of the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, April 26, 1996, 110 Stat. 1321). The Department’s overpayment procedures may be found on the Office of Hearings & Appeals website at: <http://oha.ed.gov/overpayments.html>.

⁷ *See* 5 U.S.C. § 5584(b) (2012) (noting the authority held by the authorized official in waiver cases).

⁸ *See e.g., In. re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005).

Respondent argues that a waiver should be granted because he had no reason to recognize that payments made to him were erroneous and that “collection [of the debt] would be against equity and good conscience.” Specifically, Respondent asserts that because relevant time and attendance sheets were not generated for the relevant period, he had no way of reviewing if the correct information was entered relating to when he was working and what leave was being used. Additionally, Respondent asserts that because of his medical condition he has been unable to work, and as the primary income earner in his household he has gone many months without income. Also, Respondent asserts that he has a disabled child at home who is under his care. In support of his claims, Respondent has supplied substantial documentary support. Based on the information and documents submitted by Respondent, I find that a waiver should be granted in this matter.

DISCUSSION

Determining whether waiver is appropriate requires consideration of two factors: (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.⁹

It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”¹⁰ 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).¹¹ It is not enough, however, for the debtor to meet the fault standard. The debtor must also demonstrate that collection of the debt would be against equity and good conscience or not in the best interests of the United States.

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.”¹²

As a starting point, there is no indication that the overpayments at issue in this matter resulted from Respondent’s fraud, actions, statements, or failures to disclose information. So the only issue before this Tribunal is whether Respondent accepted the overpayments when he knew, or should have known, that he was not entitled to the additional pay. As Respondent notes, he

⁹ See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005).

¹⁰ *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep’t of Educ. (Oct. 24, 2013) at 4; *In re Carolyn*, Dkt. No. 11-02-WA, U.S. Dep’t of Educ. (Aug. 11, 2011) at 4.

¹¹ See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep’t of Educ. (Dec. 12, 2005).

¹² See *In re Robert*, Dkt. No. 09-10-WA, U.S. Dep’t of Educ. (Nov. 19, 2009) at 3.

was not supplied with the relevant time and attendance sheets to confirm that the correct information was being entered. Under the specific circumstances of Respondent's case, I find that he would have had a difficult time getting access to relevant information. Additionally, at the time the overpayments arose, Respondent was dealing with medical issues, impeding his ability to recognize and respond to the erroneous payments he received. In many ways, this case is similar to *In re Mary Jane*,¹³ where this Tribunal determined that the respondent's failure to recognize overpayments was reasonable where she was unable to access relevant documents and her medical condition impacted her ability to recognize the cause of the overpayments. In short, the overpayments would not be clear to him and Respondent has made a showing that he has met the "fault standard."

When determining whether to grant a waiver, however, it is not enough to meet the fault standard. This Tribunal must also "balance the equities" by considering a number of factors, to determine whether repayment would be inequitable.¹⁴ One established reason it may be inequitable to require repayment of a debt would be if "recovery of the claim would impose an undue financial burden upon the debtor under the circumstances."¹⁵

Respondent has asserted in a sworn statement that he is currently facing a situation where, due to his inability to work because of medical reasons, his family has lost its primary source of income. Additionally, Respondent notes in his sworn statement that he is caring for his disabled child. Although there are no rigid rules governing the equity standard,¹⁶ in the past we have noted that the financial obligations associated with caring for and supporting a family member or loved one can make repayment of a debt an undue, and inequitable, financial burden.¹⁷ We have also concluded that a loss of income can contribute to making repayment of a debt inequitable.¹⁸ Requiring repayment of a debt of over \$6,500 under these circumstances, where there is a substantial loss of income and expenses from the care of a family member, would, thus, impose an undue financial burden on Respondent.

In summary, Respondent has made a showing that he is not at "fault" for the overpayments, and repayment of the debt at this time would be inequitable. Therefore, Respondent's request for a waiver of the debt at issue in this matter is granted. This decision constituted a final agency decision.

¹³ Dkt. No. 06-82--WA, U.S. Dep't of Educ. (Dec. 15, 2006).

¹⁴ *In re R*, 15-17-WA, U.S. Dep't of Educ. (May 12, 2015) at 5.

¹⁵ *In re Donna*, Dkt. No. 12-56-WA, U.S. Dep't of Educ. (November 8, 2012) at 5-6.

¹⁶ *In re T.*, Dkt. 13-40-WA, U.S. Dep't of Educ. (December 5, 2013) at 3.

¹⁷ See *In re C*, Dkt. No. 15-27-WA, U.S. Dep't of Educ. (June 3, 2015) at 5; *In re B*, Dkt. No. 14-33-WA, U.S. Dep't of Educ. (Oct. 15, 2014) at 8; *In re Z*, 14-26-WA (July 24, 2014).

¹⁸ See *In re Lisa*, Dkt. No. 14-16-WA & 14-20-WA, U.S. Dep't of Educ. (July 8, 2014), *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005)

ORDER

Pursuant to the authority of 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the debts to the United States Department of Education is **HEREBY GRANTED**.

So ordered this 21st day of September 2015.

Daniel J. McGinn-Shapiro
Waiver Official