



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
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In the Matter of

Docket No. 14-26-WA

Z,

Respondent.

Waiver Proceeding

DECISION GRANTING PARTIAL WAIVER

At issue in this case is whether an employee (Respondent) of the U.S. Department of Education (Department) may obtain waiver of a debt arising from a salary overpayment caused by the Department's erroneous failure to make payroll deductions, over the course of sixteen pay periods, of the employee's share of premiums for his elected health benefit coverage. Specifically, from August, 2013, through March, 2014, the Department failed to deduct **\$1670.79** from Respondent's paycheck. While Respondent acknowledges that this debt is owed to the Federal government, he requests that repayment of the debt be waived for two reasons. First, he emphasizes that the overpayment was caused by a Department payroll error, and, second, he asserts that repayment of the debt would cause he and his family undue hardship. For the reasons that follow, I find that waiver of this debt is warranted. Accordingly, Respondent's request for waiver is granted in part.

The Office of Hearings and Appeals (OHA), on behalf of the Secretary, maintains authority to waive¹ claims by the United States against current or former employees of the Department from the Department's implementing regulations,² and policy set forth in the Department of Education, Administrative Communications System, *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04) (revised Jan. 2012).³ Resolution of this case is

¹ "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.

² 34 C.F.R. Part 32 (§ 32.1 *et seq.*).

³ See 5 U.S.C. 5584 (b) (stating the authority held by the authorized waiver official in waiver cases); *see also* 5 U.S.C. § 5514 and 31 U.S.C. § 3716 (constituting the statutory sections of significance in the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, April 26, 1996, 110 Stat. 1321). The Department's overpayment

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, and documents generated by the Federal Personnel Payroll System (FPPS). This decision constitutes a final agency decision.

In a waiver proceeding, the debtor acknowledges the validity of the debt, but disputes that he or she should repay the amount of funds in question. The debtor further declares that there is no indication of fraud, misrepresentation, fault or lack of good faith on their part or anyone else having a vested interest in obtaining a waiver of the claim.⁴ In the submission requesting a 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 in order 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.

HISTORY

Under the Federal Employees Health Benefits Act of 1959 (FEHBA),⁵ Congress established a comprehensive employer-sponsored group health insurance program (known as the Federal Employees Health Benefits or FEHB) for Federal employees. Under the Act, the Federal government and the employee share responsibility for premiums payable to the employee's health plan.⁶ Under this plan, premiums are paid each pay period and are listed as payments and deductions on employee pay statements. During the sixteen pay periods at issue, spanning from Pay Period 17 of 2013 through Pay Period 5 of 2014, Respondent's share of his premium ranged from \$102.19 to \$109.19 per pay period.⁷ Due to an apparent error in enrollment committed by a Department payroll representative, Respondent's health benefit coverage was never properly set up. To correct the error, Respondent was issued a Bill of Collection (BoC) letter indicating that he owed a debt to the federal government in the amount of \$1,670.79.⁸

Respondent filed a timely request for waiver of the overpayment for the BoC, and met all filing requirements pursuant to the issued Order Governing Proceedings (OGP). The record in this case constitutes what has been accepted as argument and evidence, including: copies of written statements by Respondent, dated April 24, 2014, and June 12, 2014, a copy of the BoC informing Respondent of the overpayment debt, issued by the Department of the Interior's (DOI) payroll office on April 14, 2014, information found on Respondent's Leave and Earning

procedures may be found at: www.oha.ed.gov/overpayments/.

⁴ See U.S. Government Accountability Office, scope of Waiver Authority, B-307681 (May 2, 2006).

⁵ Pub. L. No. 86-382, 73 Stat. 709 (codified, as amended, at 5 U.S.C. § 8901).

⁶ 5 U.S.C. §8906.

⁷ This reflects a change in Respondent's rate occurring during Pay Period 3 of 2014.

⁸ Debt ID: 41051421041

Statement provided via correspondence on July 14, 2014, by Lance Westfall, Billing and Collections Technician for the DOI, and a copy of Respondent's Health Benefits Election Form (SF-2809), signed August 5, 2013. Additionally, Respondent submitted four samples of his medical bills, as follows: (1) a bill entitled "Statement of Physician Services" for \$377.19 from the Medical College of Wisconsin's Children's Specialty Group, dated May 17, 2014; (2) two bills from Aurora Health care, the first in the amount of \$235.70, dated May 19, 2014, and the second in the amount of \$512.60, dated May 25, 2014; (3) a bill from Falls Anesthesia Associates, S.C., in the amount of \$178.923, dated June 17, 2014, and (4) a bill for "general inpatient surgery" in the amount of \$3,061.84 from Community Memorial Hospital, dated June 14, 2014. Prior to the tribunal's issuance of the OGP, in Pay Period 11 of 2014, DOI deducted \$218.13 from Respondent's paycheck. As such, Respondent's overpayment debt currently stands at **\$1,452.66.**⁹

After a review of the record, the following facts are found pertinent to this case. On August 5, 2013, Respondent submitted his SF-2809 form for enrollment of himself, his wife, and his two children in FEHB, which specifically authorized the Department to deduct a bi-weekly insurance premium from his paycheck. According to Respondent's written statement, he was told by his Human Resources Representative that this was the final step in his enrollment process and that the Department would begin deducting the monthly premium "within a few pay periods." Respondent states that he assumed his insurance was fully activated upon receiving health insurance cards, booklets, and summaries from the Government Employees Health Association (GEHA) three weeks later.

Respondent states that "about three months later,"¹⁰ he called GEHA regarding a claim, at which point he was told that there was an issue with his enrollment due to a new system change. According to Respondent, the insurance representative informed him that he was restored to enrolled status after she "refreshed" her system. It does not appear that Respondent further corresponded with GEHA until January, at which point Respondent states that he began calling the company "numerous times" due to several incorrectly processed claims. Respondent further states that he was referred to a representative in charge of enrollment, for whom he left a voicemail, but that he never received a call back. Respondent again attempted to reach GEHA in February, at which time he spoke with a representative who told him that there was no update on his enrollment issue and attempted to transfer him to the representative for whom he had left the January voicemail. However, this call was ultimately disconnected. Respondent states that he did not immediately call back because he was preoccupied with his family's medical issues. Specifically, Respondent's wife received emergency surgery in February, after which she was hospitalized for extended periods and developed additional complications. Respondent's wife also required thirty days of outpatient treatment following her hospital stay. Additionally, in

¹⁰ For purposes of this proceeding, this is presumed to mean in late November of 2013.

February, Respondent's son was hospitalized after swallowing a Lego, as evidenced by Respondent's bill from the Medical College of Wisconsin's Children's Specialty Group indicating that his son received an esophagus x-ray in the emergency room. Respondent describes this time period as "the most difficult two months [he's] ever had."

According to Respondent, the insurance representative in charge of enrollment finally returned his calls in mid-March. Respondent states that he was "shocked" to learn that his premium payments were not being made, that he was given a contact number to call, but that the contact failed to assist him. Respondent states that he then personally called GEHA enrollment, was referred to a different enrollment representative, and began exchanging e-mails with her. Two days following this communication, the enrollment representative informed Respondent that a Department payroll representative had "dropped the ball" by never properly setting up his account, and took steps to restore his enrollment status. Although it appears that Respondent never lost access to health coverage during the time period at issue, he claims that, as the overpayment was due to payroll error and would cause him undue hardship to repay, he should be granted full waiver of the overpayment debt.

DISCUSSION

As a general matter, it must be noted that all waiver proceedings necessarily involve some type of administrative error committed by the employer-agency, as the error is what causes salary overpayment. While undeniably frustrating, the existence of payroll error does not, of itself, entitle an overpaid Department employee to a waiver.¹¹ This follows because no federal employee is entitled to the recovery of pay obtained as a result of overpayment.¹² As such, the application of the fault standard functions to enforce a statutory duty upon the employee/debtor whereby the employee must seek to correct the erroneous overpayment regardless of the existence of an initial mistake on the part of the Department.

Pursuant to 5 U.S.C. § 5548, waiver of debt is an equitable remedy. Broadly stated, the decision of whether or not to grant such a remedy requires consideration of two factors; namely, (1) whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the

¹¹ See *In re Richard*, Dkt. No. 12-19-WA, U.S. Dep't of Educ. (April 4, 2012) ("[N]otwithstanding the fact that an administrative error by the government may cause an employee to be paid at a rate that exceeds the employee's lawful rate of pay, the government's error cannot, itself, entitle an employee to waiver." (citing *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 15, 2005))).

¹² See *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) ("[A]lthough salary overpayments arise as a result of mistakes by those with the responsibility for making salary payments, the overpayment, nevertheless, is in excess of the amount of authorized salary; therefore, the issuance of a BoC is presumptively the agency's exercise of the right to recover the excess amount.").

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.¹³

Fault Standard

Although the term *fault* is conventionally defined as a blunder, mistake, or responsibility, it retains a specialized and particular meaning when used in the Waiver statute and in the application of the fault standard to such proceedings. Under this standard, fault 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;¹⁴ (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 knew or should have known to be material; and (d) whether the employee accepted the erroneous salary payment notwithstanding that the employee knew or should have known the payment to be erroneous.

Consideration of the aforementioned criteria is critical to the ultimate determination of whether or not to grant a waiver, as one may only be granted if the debtor satisfies the threshold factors comprising the fault standard. In context, this standard involves an examination of the employee's duty to prevent or discover mistakes and errors in salary payments, when feasible, as he or she is in the unique position to know of antecedent conditions that could give rise to erroneous payments. Given that the employee is often the individual who initiates a change in status, such as a change in health benefits coverage, the employee is uniquely able to examine the subsequent pay change for mistaken payments and alert the employer regarding such errors.¹⁵

Applying this standard to the case at bar, Respondent acknowledges his debt, but argues that waiver is warranted because he was not made aware of the enrollment error until calling the insurance company in November, at which point he was told by a representative that he was restored to enrolled status. Prior to this time, Respondent states that, after completing his initial paperwork in August and subsequently receiving corresponding documents, he simply assumed he was properly enrolled in FEHB. Respondent further argues that, once he was made aware of the enrollment error, he made repeated attempts, from January through March, 2014, to bring this

¹³ See *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

¹⁴ Under the fault standard, the scope of Respondent's duty extends to include the obligations to: (1) verify bank statements and/or electronic fund transfers of salary payments, (2) question discrepancies or unanticipated balances from salary overpayments, and (3) set funds aside for repayment when appropriately recognizing a salary overpayment. See *In re William*, Dkt. No. 05-11-WA, U.S. Dep't of Educ. (Oct. 19, 2005). In a waiver proceeding, therefore, the debtor must either (1) acknowledge the validity of the debt or (2) urge the absence of any reason to recognize the salary payment at issue as an overpayment.

¹⁵ See *In re Richard*, Dkt. No. 12-19-WA, U.S. Dep't of Educ. (April 4, 2012).

error to the attention of the Department. Although it appears that Respondent might have been more diligent in discovering a paycheck discrepancy prior to calling GEHA in November, 2013, it is unreasonable to suggest that Respondent should have maintained awareness of this error after being told at that time by a Department representative that he was restored to enrolled status. Respondent's good faith and reasonable belief that he and his family maintained enrollment status is further evidenced by the fact that he continued to receive health benefits during the time period at issue. Moreover, once Respondent learned that the payroll error was never actually corrected, he took repeated measures to alert the Department.

Under the circumstances, it does not appear that there is any indication of fraud, misrepresentation, or lack of good faith on the part of Respondent. Rather, Respondent continued to receive health coverage for the time period at issue, and appears to have held a good faith belief that he was properly enrolled in, and making payments to, FEHB. In this light, the tribunal must weigh Respondent's efforts in attempting to alert the Department to the error once discovered against his failure to discover the error prior to November of 2013. Respondent's lack of fault does not excuse his duty to examine bank statements and salary payments for discrepancies. While Respondent has not introduced his Leave and Earning Statements (LES) into the factual record, it should be assumed that, if carefully scrutinized, the documentation would have revealed the absence of \$102.19 or \$109.34 bi-monthly premium payment deductions. However, in his defense, Respondent states that he was new to the government during the time period at issue, and did not fully understand the many acronyms listed on his paycheck. Given the particular circumstances of this case, and in light of the fact that Respondent made repeated attempts to rectify the enrollment error after becoming aware of it, the tribunal concludes that Respondent has succeeded in satisfying the fault standard. Accordingly, there is no indication of fraud and no evidence showing that Respondent failed to disclose material facts to his employer/supervisor or accepted erroneous salary overpayments with knowledge of the error. Rather, Respondent operated under a mistakenly held, but reasonable, belief that he was properly enrolled in FEHB, and attempted to correct the Departmental error upon learning of it.¹⁶

Equity and Good Conscience

After determining that Respondent has satisfied the fault standard, this tribunal must now turn to the question of whether collection of the debt by the Federal government would be against equity and good conscience. To satisfy the equity and good conscience standards, the debtor must have acted fairly, without fraud or deceit, and in good faith.¹⁷ There are no concrete rules governing the application of this standard, but rather the tribunal must balance equity and

¹⁶ See *In re Leslie*, No. 07-295-WA, U.S. Dep't of Educ. (Nov. 13, 2008) ("In the balance, Respondent's circumstances persuade the tribunal that her eventual diligence weighs more heavily than her lack of haste.")

¹⁷ See 5 U.S.C. § 5584; see also *In re Anh-Chau*, Dkt. No. 05-01-WA, U.S. Dep't of Educ. (June 17, 2005).

apprise good conscience in light of the particular facts and circumstances of the case at bar.¹⁸ Specific factors weighed by the tribunal include the following: (a) whether recovery of the claim would be unconscionable under the circumstances; (b) whether the debtor has relinquished a valuable right or changed his position based on the overpayment; and (c) whether the time elapsed between the erroneous payment and discovery of the error and notification of the employee was excessive.

Given the unique circumstances stemming from his family's medical and financial situation Respondent argues that repayment of the debt would result in an undue financial hardship. In order to support his assertion of hardship, Respondent submitted significant medical bills resulting from the hospitalization of his wife and child in February of 2014. Moreover, Respondent emphasizes that he was distracted and preoccupied with caring for his family during the time period at issue, which mitigates the fact that he could have taken further steps, aside from repeatedly calling GEHA from January-March, to resolve the enrollment error.

Under these circumstances, I am convinced that there are significant factors supporting Respondent's waiver request, including Respondent's efforts to alert the Department through repeated phone calls, several of which went unreturned on the part of the Department. When placed in the context of the undue hardship experienced by Respondent and his family throughout this time period, Respondent's good faith efforts to remedy the situation created by a Departmental error mitigate in favor of granting a waiver request. Respondent maintained a duty to question payroll discrepancies throughout the entire time period at issue, and was in the best position to examine his paycheck for errors. However, under the totality of the circumstances, I conclude that it would be against equity and good conscience for the federal government to recover overpayments of all debt accruing after Respondent's initial attempts to resolve the enrollment error in November of 2013. As such, I find Respondent liable only for the first four of sixteen pay periods in which his health benefit premiums were not being deducted, in the total amount of **\$408.76**.¹⁹ Accordingly, I waive the debt for the remaining twelve pay periods at issue, in the amount of **\$1,262.03**.

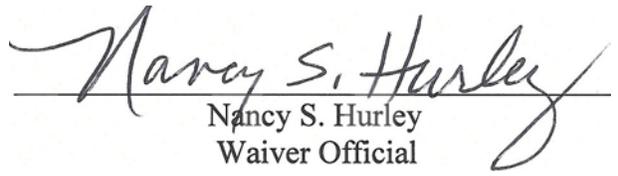
ORDER

Respondent requested waiver of the entire debt. Pursuant to my authority under the Waiver Statute, 5 U.S.C. § 5584, Respondent's request for waiver of the **\$1670.79** overpayment is **GRANTED IN PART**, and Respondent remains liable only for the return of **\$190.63**.

So ordered this 24th day of July 2014.

¹⁸ See *In re Cynthia*, Dkt. No. 05-06-WA, U.S. Dep't of Educ. (Sept. 14, 2005); see also *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005) at n.5.

¹⁹ As DOI already deducted \$218.13 from Respondent's paycheck in the eleventh pay period of 2014, Respondent is currently only liable for **\$190.63**.


Nancy S. Hurley
Waiver Official