



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

S,

Respondent

Docket No. 15-10-WA
Waiver Proceeding

DECISION GRANTING WAIVER

This proceeding concerns whether Respondent, a U.S. Department of Education (Department) employee should be granted a waiver of a salary overpayment debt in the amount of \$318.98. This overpayment arose from the Department's misclassification of Respondent's grade level upon his hiring. Based on my review, I find that waiver of this debt is warranted. Accordingly, Respondent's request for a waiver is granted.

Jurisdiction

Under 5 U.S.C. § 5584 (the Waiver Statute), the Department has the authority to waive claims of the United States against debtors as a result of an erroneous payment of pay to a federal employee.¹ The Department promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *seq.*) and its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04),² specifically delegated the exercise of the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA).

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 Respondent's initial request for waiver, his March 16, 2015 supplemental statement, and a June 19, 2014 "Decision

¹ 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, note 1.

² The Handbook, ACS-OM-04, was revised and reissued by the Department on January 19, 2012.

Paper” issued by the Department’s human resources office regarding management’s options to correct Respondent’s grade misclassification. This decision constitutes a final agency decision.

Facts of the Case

According to the Department’s January 21, 2015 Bill of Collection, the overpayment arose from Respondent being paid at the slightly higher salary level of a GS-9, step 8 employee from Pay Period 16 of 2013 through Pay Period 23 of 2013 when his salary was later corrected to a slightly lower GS-11, step 1 salary for this time period. According to Respondent, when he was hired by the Department in July 2013, the Human Resources Office’s Talent Recruitment, & Hiring Division (TRH) made an error in qualifying him at the GS-9 level when he should have been qualified at the GS-11 level.

After submitting documentation demonstrating his eligibility to be hired at the GS-11 level, the Department agreed and the agency was given two options to correct its error. In a June 19, 2014 Decision Paper, TRH identified two options for correcting the grade level misclassification. The first option was identified as the “Status Quo” option and proposed that Respondent remain at the GS-9, step 8 level with a salary of \$63,673, then in July 2014, Respondent would be promoted to the GS-11, step 4 level at a salary of \$69,400, and finally, when eligible in July 2015, be promoted to a GS-12, step 1 level at a salary of \$75,621. The second option “Re-certify at the GS-11 level” reclassified Respondent immediately at a GS-11, step 1 level at a salary of \$62,467 (2013 pay scale). Then, in July 2014, Respondent would be promoted to the GS-12, step 1 level at a salary of \$75,621. The Decision Paper noted that a debt would be generated if the second option was selected. The Department selected the second option, which resulted in Respondent owing a salary overpayment debt for the period Respondent was paid at the GS-9, step 8 salary of \$63,673 instead of the GS-11, step 1 salary of \$62,467.

Discussion

A salary overpayment is created by an administrative error in the pay of an employee in regard to the employee’s salary.³ The fact that an administrative error created an overpayment does not relieve the overpaid employee from liability.⁴ Instead, an employee who does not contest the validity of the debt may request that the debt be waived or forgiven.

Waiver is an equitable remedy available only when there is no indication of fraud, misrepresentation, fault, or lack of good faith by the debtor.⁵ 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.

³ See 34 C.F.R. Part 32 (2004).

⁴ See *In re Robert*, Dkt No. 05-07-WA, U.S. Dep’t of Educ. (July 8, 2005), n. 12.

⁵ See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep’t of Educ. (December 12, 2005).

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.⁶ 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, if reviewed, would indicate a salary overpayment.⁷ Thus, every waiver case must be examined in light of its particular facts and circumstances.⁸

In 2013, Respondent was hired at the GS-9 level and placed at the GS-9, step 8 salary due to his superior classifications. Typically, new hires begin at step 1 salary level of the grade. However, Respondent believed the grade level he was hired at was classified below what it should have been. Respondent submitted documentation to support his assertion and the Department ultimately agreed that his position should have been classified at the GS-11 grade. Respondent, an employee new to the federal service, would not have been aware that the option selected by the Department to correct its error would result in a salary overpayment to him. The June 19, 2014 Decision Letter in which the second corrective option was selected was not signed by him. Instead, it was a Department manager that approved the second option, which resulted in Respondent owing a debt. Respondent could not have known – based on the complexities of the grade classification and salary determination process - that this corrective action would result in an overpayment to him.

In waiver cases, when an employee neither knows nor has reason to know that the Department's corrective action reclassifying his position at a higher level would result in his owing a debt, is not at fault. In fact, it may be counterintuitive to an individual new to federal employment that his getting a higher-graded position could result in him earning a lower salary. As an initial matter, the tribunal recognizes that this salary overpayment was the result of an administrative error that does not reflect any fraud, misrepresentation, or lack of good faith by Respondent. The record also reflects that Respondent did not know nor should have known that an overpayment occurred because there is no indication that he was made aware that the Department's selection of the second option presented in the Decision Letter would result in an overpayment.

Equity and Good Conscience

To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.⁹ Beyond this framework, there are not rigid rules governing the application of the equity and good conscience standard. The tribunal must balance equity and/or

⁶ See *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (November 9, 2005).

⁷ See *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005).

⁸ See *id.* at 5.

⁹ 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).

