



UNITED STATES DEPARTMENT OF EDUCATION

In the Matter of

Docket No. 15-17-WA

R,

Waiver Proceedings

Respondent.

DECISION DENYING WAIVER

On March 31, 2015, the Office of Hearings and Appeals (OHA) received a waiver request, dated March 23, 2015, from Respondent, a Department employee. Respondent requested a waiver of a debt in the above-captioned proceedings in response to receipt of a debt letter providing notice that the Payroll Operations Division of the Department of the Interior (DOI) identified an overpayment of salary to Respondent in the amount of **\$299.04**. The overpayment accrued as a result of the Department incorrectly taking too little of a retirement deduction for eleven pay periods in 2014.

On April 1, 2015, an Order Governing Proceedings was issued directing Respondent to file a short sworn statement explaining, among other things, why Respondent believed a waiver should be granted and to file necessary supporting documents. Additionally, the Order informed Respondent that “[t]o aid Respondent in presenting the clearest, appropriate, and most persuasive reasons why waiver should be granted, Respondent is encouraged to review waiver decisions issued and posted [on the OHA website].” Additionally, the Order Governing Proceedings noted that “[i]n seeking a waiver proceeding, if Respondent raises a financial hardship claim he or she should demonstrate it with specifics, and should include supporting information such as numeric monthly financial obligations to show why this is the case and why he or she asserts repayment of the debt presents a financial hardship.” On April 1, 2015, Respondent filed a sworn statement, alleging, among other claims, that repayment of the debt would “be an undue financial burden.” The only documentation provided that supported Respondent’s undue financial burden claim were the details of Respondent’s student loans.

On April 6, 2015, this Tribunal issued an Order Extending an Opportunity to Supplement the File. The Order outlined the documents that were currently before this Tribunal and instructed Respondent that if she wished to submit any further documentation in support of her

waiver request, she was to do so by May 6, 2015, because “[a]t that point, I will close the file and consider it complete.” Additionally, the Order once again encouraged Respondent to review the waiver decisions on the OHA website. Further, the Order notified Respondent that she may wish to review the Handbook for Processing Salary Overpayments, OM-04 (Handbook), available on the OHA website, specifically noting that the Handbook defines “Financial Hardship” as “[a]n inability to meet the basic living expenses for goods and services necessary for the survival of the debtor, his/her spouse and any dependents.” Finally, because a financial hardship claim requires a respondent to both demonstrate with specifics that the repayment will constitute an undue financial hardship, and provide supporting documentation, the Order noted that “documentation that can demonstrate a financial hardship include evidence of: (1) income from all sources; (2) assets; (3) liabilities; (4) number of dependents; (5) expenses for food housing, clothing, and transportation; (6) medical expenses; and (7) any exceptional expenses.”

To date, Respondent has filed no additional information or supporting documents in response to the Order Extending an Opportunity to Supplement the File. Currently before this Tribunal, therefore, are the following documents filed either with the initial request for a waiver or with the sworn statement:

- (1) Respondent’s request for a waiver, dated March 23, 2015;
- (2) Respondent’s sworn statement, dated April 1, 2014;
- (3) The notice from the U.S. Department of the Interior, dated March 5, 2015, notifying Respondent that she owes a debt of \$299.04;
- (4) Respondent’s “Loan Details” providing information about her student loans and the schedule of repayment for those loans;
- (5) The Letter for the Department’s Human Capital and Client Services Office, dated January 28, 2015, notifying Respondent of the overpayments; and
- (6) A Bill of Collection, notifying Respondent of her \$299.04 debt.

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.¹

When 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 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.

This decision constitutes a final agency decision.

¹ 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),² which, thereby, exercises authority and jurisdiction on behalf of the Secretary of Education to waive³ claims of the United States against a former or current employee of the Department.⁴ The undersigned is the authorized Waiver Official who has been assigned this matter by OHA.⁵ Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

PROCEDURAL HISTORY

In a letter dated January 28, 2015, the Department's human resources department, Human Capital and Client Services (HCCS), notified Respondent that upon review, HCCS discovered that Respondent was placed into the incorrect retirement system. The letter further informed Respondent that she would receive a letter of indebtedness from DOI in 4 to 6 weeks which would outline the amount due and the repayment options. In a letter dated March 5, 2015, Respondent was notified by DOI that she owed a debt of \$299.04. On March 23, 2015, Respondent sent OHA a request for a waiver. After an Order Governing Proceedings was issued, Respondent submitted a sworn statement on April 1, 2015.

Respondent acknowledges the validity of the debt, but argues that there was no fraud, misrepresentation, fault, or lack of good faith on her part. Respondent further asserts that she had no control over which retirement system she was placed in and, because a portion of her pay was deducted for retirement, no reason to know the error or overpayments. Finally, Respondent contends that had she known of the overpayments, she "would have taken every step to correct it."

Respondent additionally argues that it is "against equity and good conscience for the Federal government to recover this debt, as repayment would be an undue financial burden." In support Respondent argues that the high cost of living and the expenses of student loan repayment have left her with a "tight monthly budget."

² 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).

³ *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).

⁴ *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 OHA website at: <http://oha.ed.gov/overpayments.html>.

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

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.⁶

It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”⁷ 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).⁸ 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, and 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.”⁹

As to the fault standard, this Tribunal has already spoken as to this situation numerous times. In *In re Joseph*, 08-06-WA, *In re T*, 13-40-WA, and most recently, *In re E*, 15-07-WA, it was determined that retirement classifications are not readily clear to the average employee, and most employees are not charged with knowing whether the Department has accurately classified them. In *In re L*, 14-70-WA, on the other hand, we charged the employee with such knowledge. In that case, however, the respondent was an employee in the Department’s human resources department, and because one of the pertinent factors used to determine whether an employee should have known of an overpayment is “an employee’s position,”¹⁰ there is a presumption that, as a human resources specialist, the respondent had more knowledge than the average employee about matters relating to the retirement classification of employees. Because nothing was presented to overcome that presumption, the respondent in that case failed to make an adequate showing to overcome the fault standard and his waiver request was denied. In the present matter, Respondent works with the Advisory Committee on Student Financial Assistance, and nothing about her position, training, or experience indicates that she would have any specialized knowledge of human resources matters like retirement classifications. Therefore, because Respondent in this matter is like the respondents in *In re E*, *In re Joseph* and *In re T*, and an incorrect retirement classification would not be clear to her, there is no showing she knew or

⁶ See, e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005).

⁷ *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep’t of Educ. (October 24, 2013) at 4; *In re Carolyn*, Dkt. No. 11-02-WA, U.S. Dep’t of Educ. (August 11, 2011) at 4.

⁸ See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep’t of Educ. (December 12, 2005).

⁹ See *In re Robert*, Dkt. No. 09-10-WA, U.S. Dep’t of Educ. (November 19, 2009) at 3.

¹⁰ *Id.*

should have known of the overpayments. As there is also no indication of fraud or that the overpayments resulted from any action or inaction by Respondent, the fault standard is met in this matter.

When determining whether to grant a waiver, however, this Tribunal must also “balance the equities” by considering a number of factors. One established reason it would 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.”¹¹

Respondent argues that “it is against equity and good conscience for the Federal government to recover this debt, as repayment would be an undue financial burden.” In support of her undue financial burden contention, Respondent asserts that she is a recent college graduate trying to balance living expenses in one of the country’s highest cost of living cities with nearly \$50,000 in student loan debt. She contends that as a result, she is left with “a tight monthly budget from which to pull this repayment from.” The only specific provided by Respondent is that the \$299.04 debt represents a significant portion of the \$460.70 she is required to repay monthly. In support of this contention, Respondent has submitted a Loan Details Document.

Despite multiple opportunities to do so, Respondent has failed to make an adequate showing that repayment would cause an undue financial burden. As this Tribunal has stated in the past, “[t]here 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.”¹² In the Order Governing Proceedings, Respondent was counseled that if raising “a financial hardship claim [Respondent] should demonstrate it with specifics, with supporting information about why this is the case and why he or she asserts ability to repay the debt is a hardship.” After initially submitting a response on April 1, 2015, Respondent was provided an opportunity to supplement the record. In neither of her filings, however, has Respondent made an adequate showing to warrant a waiver.

“Although there are no rigid rules governing the equity standard, in the past we have looked to whether requiring repayment would result in a loss of ‘medical care, housing, or other life sustaining needs.’”¹³ The Department’s Handbook defines “Financial Hardship” as “[a]n inability to meet the basic living expenses for goods and services necessary for the survival of the debtor, his/her spouse and any dependents.”¹⁴ Although Respondent has asserted that she has a “tight monthly budget,” Respondent has failed to provide sufficient support to show that requiring repayment would render her unable to meet her basic living expense or those of a family member or dependent. Additionally, Respondent may work with the Department to establish a voluntary payment plan wherein she is not required to repay the entire debt in one lump sum but may repay the debt in a series of installments.¹⁵ In short, Respondent has failed to prove that the repayment of \$299.04 will impose an undue financial burden.

¹¹ *In re Donna*, Dkt. No. 12-56-WA, U.S. Dep’t of Educ. (November 8, 2012) at 5-6.

¹² *In re April*, Dkt. No. 12-23-WA, U.S. Dep’t of Educ. (July 11, 2012) at 9.

¹³ *In re E*, Dkt. No 15-078-WA, U.S. Dept. of Educ. (March 31, 2015) at 6.

¹⁴ HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised January 2012) at 6.

¹⁵ 34 C.F.R. § 32.10.

Because Respondent has failed to meet her burden to show that it would be unconscionable or not in equity to require repayment, I have no choice but to conclude that a waiver is not warranted.¹⁶ Therefore, Respondent's request for a waiver is denied. This decision constitutes a final agency decision.

ORDER

Pursuant to the authority of 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the entire debt to the United States Department of Education in the amount of **\$299.04** is **HEREBY DENIED**.

So ordered this 12th day of May, 2015.

Daniel J. McGinn-Shapiro
Waiver Official

¹⁶ *In re April*, Dkt. No. 12-23-WA, U.S. Dep't of Educ. (July 11, 2012) at 10; *In re Sarah*, 11-07-WA, Dkt. No. 11-07-WA, U.S. Dep't of Educ. (May 5, 2011) at 3.