



UNITED STATES DEPARTMENT OF EDUCATION

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In the Matter of

**Docket No. 15-21-0F**

**K,**

Salary Overpayment

Respondent

**DECISION**

The legal authority pertinent to this case draws from the Debt Collection Act of 1982, as amended, the implementing regulations at 34 C.F.R. Part 32 (§ 32.1 et seq.), and the policy set forth in the U.S. Department of Education, Administrative Communications System, Handbook for Processing Salary Overpayments (Handbook, ACS-OM-04) (June 2005, as amended 2009).<sup>1</sup> Together, these authorities prescribe procedures for handling debts and authorizing deductions from wages of federal employees.<sup>2</sup>

**ARGUMENTS OF THE PARTIES**

Respondent argues that because she made an agreement in 2009 to telework on an as needed basis from Washington State, and continued to pay the expenses associated with her Virginia residence during the period from September 6, 2014 to February 7, 2015, she was

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<sup>1</sup> See also government-wide regulations issued by the Office of Personnel Management (OPM) (5 C.F.R. Part 550, Subpart K) (OPM's Subpart K regulations provide the standard followed by federal agencies when promulgating agency-specific regulations implementing 5 U.S.C. 5514).

<sup>2</sup> When the Department issues a notice proposing a salary offset to satisfy an overpayment, the employee/debtor has the opportunity to: request a hearing concerning the existence and correctness of the amount of the overpayment, request a waiver of the debt in whole or in part, or request an opportunity to pursue both proceedings. In addition to regulations promulgated by the Department, standards prescribed by the Department of Justice and the Department of the Treasury govern certain aspects of the agency's 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). Prior to collecting debts owed to the United States by administrative offset, agencies are required to: (1) adopt the FCCS; or (2) prescribe agency regulations for collecting such debts by administrative offset, which are consistent with the FCCS. 31 U.S.C. § 3716. These standards, along with those cited in note I, supra, establish the minimum due process rights that must be afforded to a former or current employee/debtor when the Department seeks to collect a debt by salary or administrative offset.

entitled to the locality pay rate associated with Washington-Baltimore-Northern VA rather than the locality pay rate associated with the Washington State area during that time. Respondent contends that her father's health issues constituted an "as needed" basis, and that the five straight months she spent in Washington State did not violate her agreement nor change the locality rate she was entitled to during that period.

The U.S. Department of Education argues that based upon 5 CFR §531.604 and 605, Respondent's official worksite was not properly determined to be Washington-Baltimore-Northern VA while she teleworked full time from Washington State continuously from September 6, 2014 to February 7, 2015.<sup>3</sup> The U.S. Department of Education contends that because Respondent did not "work at least twice each biweekly pay period" from her home residence in Virginia, nor from her official worksite at headquarters in Washington, DC from September 6, 2014 to February 7, 2015, Respondent's official worksite during that period was her telework site in Washington State, and she should thus be compensated as an employee who officially works in Washington State. Because of this, the U.S. Department of Education claims that Respondent's payment as a Washington-Baltimore-Northern VA employee during the 5 month period resulted in an overpayment of \$761.83, as she should have been paid the locality rate of a Washington State employee. The Department also notes that there are other periods Respondent should have been paid the locality rate of Washington State, but to be equitable, the Department only asks for the \$761.83 from the period lasting from September 2014 to February 2015.

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<sup>3</sup> The U.S. Department of Education brings waiver into the discussion, but that is not relevant to the case at hand. Respondent may bring a case for waiver in the future if unsatisfied with the decision.

## DISCUSSION

Generally, employees are paid the locality rate of where their permanent duty station is; however, under telework regulations, there are two exceptions that allow employees to be paid the locality rate of the permanent duty station even though the employee is primarily working in a separate location with a different locality rate of pay. One of these exceptions is if the employee goes to the permanent duty station at least twice each bi-weekly pay period (§ 531.605 (d)(1)). The second exception applies if the employee, due to special circumstances, cannot report to the permanent duty station at least twice each bi-weekly pay period, but it's only temporarily, the employee maintains a permanent place of residence within the locality pay rate of the permanent duty station, and the employee is affected by an emergency situation which temporarily prevents the employee from commuting to his or her permanent duty station (§ 531.605 (d)(2)). Respondent did not meet the first exception, as she remained in Washington State without traveling to Washington, DC or Virginia for five months straight. Respondent did not meet the second exception either, as she began traveling to Washington State for months at a time in 2010, and continued to do so through 2015. A five year period is too long to be considered "temporary" and thus Respondent could not meet the second exception.<sup>4</sup> Because Respondent's activity does not meet either exception, she should have been paid the locality rate of Washington State, and thus must pay the Department \$761.83.

Although the Department seeks to recover an overpayment for substantially less than the five year period, the basis for the government's choosing only the period from September 2014 to February 2015 seems to be fairness, which is not a factor in a pre-offset proceeding. Therefore, the total liability, if recalculated, could include more periods from 2010 through 2015

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<sup>4</sup> See <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/factsheets/official-worksite-for-location-based-pay-purposes/> (interpreting "temporary" to mean it will end in the near future).

that were not specifically addressed in this proceeding. However, Respondent is free to pursue issues of fairness and equity in a waiver proceeding that has been stayed pending the outcome of this case.

**ORDER**

It is hereby ordered that Respondent pay to the U.S. Department of Education the sum of \$761.83.



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Rod E. Dixon  
Chief Administrative Law Judge