



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

R,

Respondent.

Docket No. 15-34-WA

Waiver Proceedings

DECISION DENYING WAIVER

On May 26, 2015, the Office of Hearings and Appeals (OHA) received a waiver request, dated May 18, 2015, from Respondent, a Department employee, in the above-captioned proceedings. Respondent's waiver request comes in response to the receipt of a Bill for Collection from the Department of the Interior (DOI) providing notice of an overpayment of salary to Respondent in the total amount of **\$4,003.20**.¹ DOI indicated through its Bill for Collection that the "reason for overpayment was a time sheet correction processed by your agency." Respondent asserts that Human Capital and Client Services (HCCS) informed her by email that she incorrectly received a Within Grade Increase on February 9, 2014, resulting in subsequent overpayments.

Respondent asserts that she "never knew that I was being overpaid at the expense of an error with [HCCS]."² However, Respondent admits that she knew she received a step increase one pay period after receiving a grade increase.³ Respondent states that, because her grade increase was effective on February 9, 2014, even though she was eligible for a grade increase in December of 2013, she believed the premature step increase "was HCCS correcting their error of the late promotion."⁴ Respondent asserts that, as a long-time Federal employee who acted in good faith, she should not be penalized due to HCCS' missteps and errors.⁵

¹ Respondent has submitted a document titled "Attachment" which shows Total Gross Pay Adjustments of \$4,003.20 and Net to be Paid by Employee of \$3,498.57 following an itemized breakdown of pay periods, pay codes and amounts for which Respondent was overpaid. That document is the basis for this decision. Respondent has also submitted a document titled "Request for Bill for Collection" showing a calculation justifying a net overpayment of \$142.53 in pay period 2014-06, but also listing "Net amount owed for System Debt" as \$4,065.24, "Net amount owed for Manual Debt" as \$142.53, and "Total Net owed by Employee" as \$4,207.77. The relevance of this document and the conflicting net obligation are unclear from the submissions.

² Appeal at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

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.⁶ 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.⁷ This decision constitutes a final agency decision.

JURISDICTION

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

DISCUSSION

It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”⁸ Waiver of an erroneous salary payment is an equitable remedy. 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 Failure to demonstrate both factors is grounds for denial of a waiver claim.¹⁰

A respondent may satisfy the equity standard by demonstrating, among other things, that repayment of the debt would be unconscionable or that repayment would impose an undue financial burden upon the debtor under the circumstances.¹¹ A respondent may demonstrate a financial hardship if repayment would result in a loss of medical care, housing, or other life sustaining needs.

In support of her appeal, Respondent has provided documents explaining her debt, including the Bill for Collection, a leave and earnings statement, SF-50 personnel documents, and an email from HCCS staff explaining that Respondent “was given a [within-grade increase] incorrectly last year.”¹² Respondent asserts that she is being penalized and “short changed” due

⁶ *In re E*, Dkt. No. 15-7-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 2.

⁷ *Id.*

⁸ *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.

⁹ *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005) at 3, 5.

¹⁰ *E.g.*, *In re E*, Dkt. No. 15-7-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6–7.

¹¹ *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005) at 5–6.

¹² Email from Michele Miles to Respondent dated Mar. 4, 2015.

to HCCS' error.¹³ However, Respondent has not made any argument that repayment is unconscionable or constitutes a financial hardship nor has Respondent provided any documentary evidence to support such a claim.

“There 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 a waiver.”¹⁴ Respondent's request for a waiver relies solely on her assertion that she was unaware that she was receiving overpayments and the fault should rest with HCCS. However, I need not evaluate the fault standard, because Respondent has not shown that repayment of the debt is against equity and good conscience. In the absence of such a showing, there is no ground for granting a waiver. Accordingly, Respondent's request for a waiver is denied. This decision constitutes a final agency action.

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 **\$4,003.20** is **HEREBY DENIED**.

So ordered this 9th day of July 2015.

Charles S. Yordy III
Waiver Official

¹³ Appeal at 1.

¹⁴ *In the Matter of E*, Dkt. No. 15-07-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep't of Educ. (July 11, 2012) at 9).