



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

L,

Respondent.

Docket No. 15-44-WA

Waiver Proceeding

DECISION DENYING WAIVER

By order dated August 31, 2015, I issued a briefing schedule for the above-captioned waiver case. I granted Respondent to and including September 18, 2015, to file a statement of reasons and exhibits in support of her waiver request. Respondent has not filed anything further. Therefore, I shall proceed with deciding the matter based on the documents submitted thus far.

BACKGROUND

According to the record before me, the Payroll Operations Division of the Interior Business Center issued a letter to Respondent dated July 6, 2015. The letter notified Respondent that she incurred a debt as a result of a personnel action processed for pay periods 201512 and 201513. According to Respondent, she incurred a debt of \$247.34. The debt arose because Respondent transferred from one regional office to another, but continued to receive a higher locality pay from the former office during these two pay periods.

Respondent argues in her Waiver Request that it is inequitable for her to be paid the lower locality pay at her new office for those two pay periods because, during that time, she continued to live in the former region and work out of her former office. She asserts that "at least two other" employees from her office "received the locality pay for the region that they lived in, not the regional office they work for."

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (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.”¹ 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.² The person seeking a waiver bears the burden of proof; failure to demonstrate both factors is grounds for denial of a waiver claim.³ 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.⁴

Respondent has asserted that repayment is inequitable based solely on an assertion that her organization has, in the past, given locality pay to two employees based on where they lived, not on where their duty stations were located. In essence, Respondent argues not only that repayment of this particular debt amount is inequitable, but that paying her at the locality rate of her official duty station is inconsistent with past departmental policy. However, Respondent has not pointed to any regulation or policy that would undermine the validity of the debt.⁵ Neither has Respondent provided any evidence that these other incidences of locality pay occurred, were correctly paid by her agency, and were analogous to her situation such that collection of her debt would be unconscionable.

I find no evidence in the record to contradict the debt collection letter. 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.

¹ *In re Danea*, 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.

² 5 U.S.C. § 5584(a) (2012); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3, 5.

³ *E.g.*, *In re E*, Dkt. No. 15-7-WA, U.S. Dep’t of Educ. (Mar. 31, 2015) at 6–7; *In re Robin*, Dkt. No. 07-114-WA, U.S. Dep’t of Educ. (Aug. 4, 2008) at 3.

⁴ *In re E*, Dkt. No. 15-7-WA at 6–7.

⁵ Prior to moving forward with the instant proceeding, Respondent requested a pre-offset hearing before a hearing official. In that proceeding, Respondent had an opportunity to challenge the validity of the same debt at issue here. However, by order dated July 6, 2015, the assigned hearing official dismissed the case. According to the dismissal order, Respondent failed to file a complete request for a hearing or to meet her burden of proof regarding the validity of the debt.

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 \$247.34 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: September 22, 2015