



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of
K,

Docket No. 16-5-WA

Waiver Proceedings

Respondent.

DECISION GRANTING WAIVER

On February 9, 2016, Respondent, a Department employee, requested a waiver of a debt in the above-captioned proceedings. Respondent's request came in response to notice of a debt arising out of an overpayment of salary totaling **\$3,884.94**. Respondent asserts that the overpayment arises from corrections made to Respondent's retirement contributions and life insurance contributions from different pay periods between 2006 and 2014.

On February 16, 2016, an Order Governing Proceedings was sent to Respondent directing Respondent to file a short sworn statement explaining why Respondent believed a waiver should be granted and to file necessary supporting documents. On February 26, 2016, Respondent submitted a sworn statement and, on May 1, 2017, this matter was reassigned to me as waiver official.

Before this Tribunal are the following documents submitted by Respondent:

- (1) Respondent's request for a waiver, dated February 9, 2016;
- (2) Respondent's sworn statement, submitted February 26, 2016;
- (3) A Debt Letter, issued by the Department of the Interior (DOI) for Debt M1535200002, dated December 18, 2015;
- (4) A Debt Letter, issued by DOI for Debt M1533100001, dated December 8, 2015; and
- (5) A February 5, 2016 email from a DOI representative providing Respondent a copy of a request for bill of collection, dated November 2, 2015;

Reviewing these documents, this Tribunal concludes that Respondent's request for a waiver should be granted.

For the purposes of a waiver proceeding, the validity of the debt is assumed, but the Respondent 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, Respondent is expected to: (1) explain the circumstances of the overpayment; (2) state why a waiver should be granted; (3) indicate what steps, if any, Respondent 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 Respondent's position that a waiver should be granted.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to 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 early February 2016, Respondent noticed additional deductions were being taken from her pay. Respondent contacted a representative from the Department of the Interior's Debt Management Branch (DOI) and asked him about the deductions and a debt letter referencing

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.

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 Jan. 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).

Debt M1533100001 (Debt Letter 1). The DOI representative informed Respondent that Debt Letter 1 was sent in error and that the deductions were related to Debt M1535200002. When Respondent informed the DOI representative that she had not received notice of that debt, she was sent a copy of a debt letter for Debt M153520002 (Debt Letter 2) via email. Debt Letter 2 and an additional bill of collection sent by DOI indicated that the deductions were related to improper calculations of deductions to Respondent's pay for retirement and for life insurance. From conversations with representatives from DOI, Respondent further learned that the debt accrued because approximately ten dollars too little was taken for retirement and four dollars too little for life insurance over many pay periods. In response, Respondent requested her leave and earning statements going back to 2005, and on those statements, Respondent saw that there were deductions taken for life insurance and retirement each pay period.

On February 9, 2016, Respondent submitted a request for a waiver with supporting documentation. And, after an Order Governing Proceedings was issued, Respondent obtained further clarification from the Department's human resources office and submitted a sworn statement on February 26, 2016.

Respondent first argues that she is not at fault for the overpayment. In addition to highlighting that there is no indication that she committed fraud or made any misrepresentations or acted without good faith, Respondent notes that in every leave and earning statement issued during the relevant time period, deductions were made for life insurance and retirement, and the amount of overpayments each pay period were approximately \$10 for retirement and \$4 for life insurance, differences in pay she would be unlikely to notice. Additionally, Respondent argues that requiring overpayment would be inequitable as it would cause "significant hardship." Specifically, Respondent notes that her husband retired, and in addition to the loss of his income, she is supporting her family and her parents and has recently incurred costs renovating her house to prepare it so that she can care for her father who is in a wheelchair.

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 or not in the best interests of the United States.

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

⁷ *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.

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

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 a starting point, there is no indication that the overpayments at issue in this matter resulted from Respondent’s fraud, actions, statements, or failures to disclose information. So the only issue before this Tribunal is whether Respondent accepted the overpayments when she knew, or should have known, that she was not entitled to the additional pay. The evidence presented indicates that Respondent had no reason to know of the overpayments. As she has indicated, throughout the time period at issue, deductions were taken for retirement and life insurance. The error is that the wrong amount was taken. And, in a situation like Respondent’s, where the overpayment arose because although deductions were taken for items like retirement, there was an error in the amount taken, this Tribunal has already concluded that the average employee generally should not have reasonably known about the overpayment. In *In re Joseph*, 08-06-WA, *In re T*, 13-40-WA, *In re E*, 15-07-WA, *In re R*, 15-17-WA, and *In re K*, 15-40-WA, this Tribunal has repeatedly held for example, that knowing the proper amount of deductions for retirement is not something the average employee, inexperienced in human resources issues, is charged with knowing.¹⁰ In the present matter, Respondent is a special agent in the Office of Inspector General. Nothing about her position, training, or experience indicates that she would have any specialized knowledge of human resources matters like calculating the proper deductions for life insurance or retirement.¹¹ Thus, the errors giving rise to the overpayments would not have been known to her, and Respondent has made a showing that she has met the “fault standard.”

When determining whether to grant a waiver, however, it is not enough to meet the fault standard. This Tribunal must also “balance the equities” by considering a number of factors, to determine whether repayment would be inequitable.¹² One established reason it may 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.”¹³

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

¹⁰ Contrast *In re L*, 14-70-WA, where a human resources specialist was presumed to have more knowledge than the average employee about matters relating the processing of retirement classification by the Department’s human resources office.

¹¹ This is distinct from cases where an employee’s leave and earnings statement displays that there is no deduction at all for items like health or additional life insurance. See *In re M*, 16-52-WA, U.S. Dep’t of Educ. (Feb. 15, 2017) at 5.; *In re EC*, 15-61-WA, U.S. Dep’t of Educ. (Feb. 5, 2016) at 5.

¹² *In re R*, 15-17-WA, U.S. Dep’t of Educ. (May 12, 2015) at 5.

¹³ *In re Donna*, Dkt. No. 12-56-WA, U.S. Dep’t of Educ. (November 8, 2012) at 5-6.

Respondent has provided evidence that he is currently dealing with extensive financial obligations arising from her husband retiring and real estate costs that were incurred so that Respondent can take care of a family member with an illness. Although there are no rigid rules governing the equity standard,¹⁴ in the past we have noted that the financial obligations associated with caring for and supporting a family member or loved one can make repayment of a debt an undue, and inequitable, financial burden.¹⁵ To require repayment of a debt of almost \$4,000 under these circumstances would, thus, impose an undue financial burden on Respondent.

In summary, Respondent has made a showing that: (1) she is not at “fault” for the overpayment; and (2) repayment of the debt at this time would be inequitable. Therefore, Respondent’s request for a waiver of the debt at issue in this matter is granted. This decision constituted 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 **\$3,884.94** is **HEREBY GRANTED**.

So ordered this 11th day of May 2017.

Daniel J. McGinn-Shapiro
Waiver Official

¹⁴ *In re T.*, Dkt. 13-40-WA, U.S. Dep’t of Educ. (December 5, 2013) at 3.

¹⁵ *See In re C*, 15-27-WA, U.S. Dep’t of Educ. (June 3, 2015) at 5; *In re B*, 14-33-WA, U.S. Dep’t of Educ. (Oct. 15, 2014) at 8; *In re Z*, 14-26-WA (July 24, 2014).