



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 16-12-WA

M,

Waiver Proceedings

Respondent.

Decision Denying Waiver Request

On March 21, 2016, the Office of Hearings and Appeals (OHA) received a request for a waiver of a debt, dated March 15, 2016, from Respondent, a Department employee, in the above-captioned proceedings. The request came in response to the receipt of a debt letter, dated February 29, 2016, from the Department of the Interior (DOI) providing notice of an overpayment of salary to Respondent in the total amount of **\$1,739.11** arising from the salary overpayments (Debt ID 60611494357). Respondent asserts that the overpayment resulted from the Federal Student Aid Human Resources Department (FSA-HR) erroneously changing her duty location from Atlanta to Washington DC after she was promoted.

On March 30, 2016, an Order Governing Proceedings was sent via electronic mail in response to Respondent's waiver request. The Order Governing Proceedings required Respondent to file a complete waiver request, including submitting a sworn statement, on or before April 14, 2016. After Respondent failed to respond, an Order to Show Cause was issued on April 19, 2016, directing Respondent to respond on or before May 4, 2016, and "show cause why the record should not be closed and the matter decided on what has been submitted." To date, Respondent has not filed any documentation, including a sworn statement. Therefore, the file is closed and this matter is being decided based on what has been submitted.

I have reviewed what Respondent has filed, namely: (1) her initial request for a waiver; (2) the Bill of Collection, dated February 29, 2016, from DOI; (3) an SF-50 with Approval Date November 13, 2014; (4) an SF-50 with Approval Date March 25, 2015; (5) an SF-50 with Approval Date February 10, 2016; and (6) a chain of emails between Respondent and FSA-HR employees, dated between February 5, 2016 and February 9, 2016. I find that Respondent has failed to show that she is without "fault" for these overpayments. Accordingly, Respondent's request for waiver is denied.

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.

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 waiver 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 Bill of Collection, dated February 29, 2016, the Payroll Operations Division of DOI notified Respondent of a debt of \$1,739.11. Respondent indicates that this debt resulted from being overpaid for almost one year based upon Respondent's duty station being incorrectly categorized as Washington DC, rather than Atlanta, after Respondent was promoted. Specifically, Respondent asserts that from the time Respondent began working at the Department in November 2014 until she was promoted in March 2015, her duty station was correctly identified as Atlanta. When she was promoted from a GS-12 to a GS-13, FSA-HR erroneously changed her duty station to Washington DC. Respondent indicates that she did not know about this error at the time, and did not discover the mistake until after two new employees joined her office and told her about problems with their identified duty station, Respondent looked and discovered the error with her identified duty station. Respondent contends that as soon as she discovered the error, she notified FSA-HR, who quickly fixed the error.

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. 13-40-WA (December 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 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 Office of Hearings & Appeals 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).

On March 21, 2016, OHA received Respondent's request for a waiver of this debt. After an Order Governing Proceedings and a Rule to Show Cause Order were issued, to which Respondent has failed to respond. In her request for a waiver, Respondent asserts that she believes that, based on the circumstances that caused the overpayment, collection of the debt "would be against equity and good conscience."

DISCUSSION

Determining whether waiver is appropriate requires consideration of two factors; namely, (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. "Fault 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 Once an employee knows or should know of a salary overpayment, the employee is required to set aside money to repay the overpayment of salary.¹⁰

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. And, there is no indication that Respondent actually knew of the overpayments until he checked her SF-50s in February 2015 after learning about similar errors involving two co-workers. Respondent's request for a waiver, however, cannot be granted, because the SF-50's statements Respondent received throughout the time Respondent received the overpayment indicated to Respondent that he was receiving a salary based upon an incorrect duty station.

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. (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).

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

¹⁰ *In re J.*, Dkt. No. 15-50-WA, U.S. Dep't of Educ. (Nov. 9, 2015) at 6 n.14.

Respondent has submitted three SF-50 statements. The first, which has an Approval Date of November 13, 2014, was seemingly from when Respondent was first hired. This SF-50 clearly indicates that Respondent's duty station is "Atlanta, Fulton, Georgia." The second SF-50, with Approval Date of March 25, 2015, was from when Respondent was promoted. It indicates that Respondent's duty station is "Washington, District of Columbia." The final SF-50 has an Approval Date of February 10, 2016, and is seemingly the corrected SF-50 showing Respondent's duty station as "Atlanta, Fulton, Georgia."

Respondent, as a Department Employee, has an obligation to check her SF-50 statements and discover clearly indicated mistakes on them.¹¹ When Respondent received the SF-50 in March of 2015, the document clearly indicated that her duty station was Washington, DC and not Atlanta. Respondent was aware that she was working in Atlanta, as she had been prior to her promotion, and that this duty station was incorrect. Similarly, Respondent's Leave and Earning Statements would all indicate the duty station under which the Respondent is being paid. Respondent was, at a minimum, on notice that she should call and get that error remedied. Because Respondent was on notice of the error giving rise to the overpayment throughout the time she received the overpayments, she is not without "fault," and her request for a waiver must be denied.¹² 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 **\$1,739.11** is **HEREBY DENIED**.

So ordered this 11th day of May, 2016.

Daniel J. McGinn-Shapiro
Waiver Official

¹¹ See e.g. *In re Robert*, Dkt. No. 06-77-WA, U.S. Dep't of Educ. (Nov. 7, 2006).

¹² Because Respondent has failed to pass the fault standard, and her waiver request must, therefore, be denied, it is not necessary to determine whether repayment is inequitable.