



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

Docket No. 16-13-WA

E,

Waiver Proceedings

Respondent.

DECISION DENYING WAIVER

On March 21, 2016, the Office of Hearings and Appeals (OHA) received a waiver request from Respondent, a Department employee, in the above-captioned proceedings. Respondent's waiver request comes in response to the receipt of a debt letter from the Department of the Interior (DOI) providing notice of an overpayment of salary to Respondent in the total amount of **\$2,286.40**. Respondent indicates the debt arose because, from 2007 until 2015, he was charged via payroll deduction only for basic FEGLI coverage despite having elected all options at the maximum multiple.¹

By order dated March 29, 2016, Respondent was granted until April 19, 2016, to file any additional documentation in support of this waiver request. Respondent has not made any further filings.

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.² 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.³ This decision constitutes a final agency decision.

¹ Request of Waiver of Repayment (Mar. 21, 2016).

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

³ *Id.*

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.”⁴ 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.⁵ Failure to demonstrate both factors is grounds for denial of a waiver claim.⁶

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.⁷ A respondent may demonstrate a financial hardship if repayment would result in a loss of medical care, housing, or other life sustaining needs.

Documents submitted with Respondent’s waiver request indicate he received a letter from DOI dated March 1, 2016, showing a debt balance of \$2,286.40 resulting from insufficient payroll deductions for FEGLI coverage. An attached Request for Bill for Collection shows a “Total Net owed by Employee” of \$2,728.50, apparently including both the \$2,286.40 debt and an additional \$442.10 labeled “System Debt.” Respondent previously requested a waiver of the \$442.10 debt which was denied by order dated February 5, 2016.⁸ Therefore, only the \$2,286.40 is at issue here.

Respondent’s sole argument in favor of a waiver is that he acted in good faith when he filled out his FEGLI election form in 2007 and reported the erroneous payroll deductions in 2015. However, the issue of whether Respondent was without “fault” was already decided against Respondent in the February 5, 2016, order.⁹ The waiver official concluded that Respondent had an obligation to check his leave and earnings statements for accuracy.¹⁰ The waiver official further found that the leave and earnings statements prior to the correction in 2015 showed only deductions for “FEGLI-REG” and not the additional coverage Respondent

⁴ *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.

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

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

⁷ *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 5–6.

⁸ *In the Matter of EC*, Dkt. No. 15-61-WA, U.S. Dep’t of Educ. (Feb. 5, 2016).

⁹ *Id.* at 5.

¹⁰ *Id.*

elected in 2007.¹¹ Therefore, the waiver official found that Respondent was on notice of the error and could not establish that a waiver is an appropriate remedy.¹²

Furthermore, Respondent has made no presentation to me that repayment would be inequitable.¹³ “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 his assertion that he was unaware he was receiving overpayments. Respondent has not shown that repayment of the debt is against equity and good conscience.

Respondent has not established either element necessary to justify a waiver. Accordingly, Respondent’s request for a waiver is denied. This decision constitutes a final agency action.

Charles S. Yordy III
Waiver Official

Dated: May 10, 2016

¹¹ *Id.*

¹² *Id.*

¹³ In his previous waiver request, Respondent apparently argued that repayment of the \$442.10 debt would constitute a hardship. *Id.* at 3. However, Respondent has not made such an argument in the matter before me, nor has Respondent submitted any supporting evidence that would establish that repayment would be inequitable.

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).