



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 16-27-WA**

**J,**

Waiver Proceeding

Respondent.

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**DECISION GRANTING WAIVER**

On June 6, 2016, Respondent requested a waiver of a debt arising out of an overpayment of salary in the amount of **\$1,491.45**. In a May 19, 2016 Bill of Collection and Notice of Debt Letter, Respondent was notified that the aforementioned overpayment arises from an erroneous misclassification of Respondent's retirement code. Based on my review, I find that waiver of this debt is warranted. Accordingly, Respondent's request for waiver is **granted**. This decision constitutes a final agency decision.

JURISDICTION

Under 5 U.S.C. § 5584 (the Waiver Statute), the U.S. Department of Education (Department) has the authority to waive<sup>1</sup> claims of the United States against debtors as a result of an erroneous payment of pay to a federal employee.<sup>2</sup> The Department promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *seq.*) and its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04)<sup>3</sup> specifically delegated the exercise of the Secretary's waiver

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<sup>1</sup> *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).

<sup>2</sup> *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>.

<sup>3</sup> The Department's policy is set forth in the U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY

authority for salary overpayments to the Office of Hearings and Appeals (OHA).<sup>4</sup> The undersigned is the authorized waiver official who has been assigned this matter by OHA.<sup>5</sup> Resolution of this case is based on matters accepted as argument, evidence, and/or documentation in this proceeding when considered as whole, including Respondent's request for waiver, her June 5, 2016, and June 23, 2016, statements and supporting documentation including letters from the Department's Office of Human Resources (OHR), email correspondence between Respondent and OHR, SF-50 Personnel Action Forms, and the May 19, 2016, Bill of Collection and Notice of Debt Letter.

## PROCEDURAL HISTORY

On June 5, 2016, Respondent requested a waiver of her debt owed from a salary overpayment in response to a Bill of Collection from the Department of the Interior<sup>6</sup> dated May 19, 2016.<sup>7</sup> On June 9, 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 submit any necessary supporting documents. On June 23, 2016, Respondent filed a sworn statement. On June 24, 2016, the Respondent filed supporting documentation referenced in her sworn statement in support of her request for a waiver of the debt on equitable grounds.

## FACTS

On February 10, 2014, Respondent was appointed to a position in the Department's Office of Legislation and Congressional Affairs. OHR erroneously misclassified Respondent in the retirement system with the code of KR FERS-RAE & FICA, which resulted in lesser deductions being taken out of Respondent's pay than was actually owed.

On October 1, 2015, Respondent received an email from OHR informing her that this error occurred when the paperwork processing her hire incorrectly identified the retirement code in which she should have been placed upon beginning her employment at the Department. The email further explained that OHR was in the process of correcting the error and that a letter from OHR was attached to the email detailing the necessary adjustment to her retirement classification and the resulting impact. This letter, dated September 30, 2015, informed Respondent that the correction would be retroactive to the date she began working for the Department and that, once the correction is completed, she should receive a letter of indebtedness from the Interior Business

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OVERPAYMENTS (ACS-OM-04, revised Jan. 19, 2012) and available on the OHA website at: <http://oha.ed.gov/overpayments.html>.

<sup>4</sup> Id.

<sup>5</sup> See 5 U.S.C. § 5584(b) (2012) (noting the authority held by the authorized official in waiver cases).

<sup>6</sup> The Department of Interior operates as the Department's payroll contractor.

<sup>7</sup> While Respondent's request for a waiver initially indicates a challenge to the validity of the debt, Respondent provided clarification via telephone conference with this Waiver Official that she is not challenging the validity of the debt, but rather requests a waiver of the debt on equitable grounds.

Center of the Department of the Interior within four to eight weeks. Additionally, the September 30, 2015 letter also states that OHR “apologizes for the error and ultimate inconvenience” to Respondent. As previously noted, OHR’s error caused the deduction of a lower percentage of income than would have been deducted had Respondent been placed in the correct retirement category. As a result, the difference between the two classifications left Respondent with owing a debt to the Department.

In an October 5, 2015 email, Respondent acknowledged receiving OHR’s email with the attached letter and also informed OHR that the attached letter contained the incorrect mailing address for her. Respondent also asked questions about OHR’s letter. On October 6, 2015, OHR responded via email with a revised letter containing Respondent’s correct mailing address, answers to Respondent’s questions, and assurances that the letter of indebtedness should follow within the next six weeks.

When the letter of indebtedness did not arrive in a timely manner, Respondent contacted OHR via email on December 14, 2015, inquiring about the status of the letter of indebtedness and requesting assistance on what she could do to resolve this situation. When this attempt did not result in any progress, Respondent periodically contacted representatives from OHR over the course of the next five months informing OHR that she had not received the promised letter of indebtedness and seeking assistance for what she can do to resolve this matter. After this series of emails and a phone call with OHR, Respondent eventually received the letter of indebtedness in the mail on May 27, 2016.

In the Bill of Collection, or letter of indebtedness, issued on May 19, 2016, and received by Respondent on May 27, 2016, the Department of the Interior informed Respondent that she “received a Federal Salary payment in excess of the amount to which you were entitled,” or an overpayment of salary. The letter further stated that “the reason for the overpayment was a correction processed by the payroll office.” As a result, the retroactive correction to the retirement system code charged Respondent with a debt of **\$1,491.45** owed to the Federal Government.

Accordingly, Respondent requests that she be granted a waiver of her debt resulting from the administrative error causing her to be enrolled in the incorrect retirement system.

## DISCUSSION

A waiver proceeding is a narrowly focused proceeding. At issue in this proceeding is whether Respondent’s arguments, submissions, and supporting documentation warrant the granting of a portion or the entire salary overpayment in accordance with the standards prescribed by statute and consistent with the case law and regulations promulgated by the Department. In a waiver proceeding, Respondent acknowledges the validity and amount of the debt, but seeks the remedy of a waiver arguing that he or she should not be required to repay the debt from the salary overpayment 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<sup>8</sup> and equitable considerations demonstrate that collection of this debt would be against equity and good conscience and not in the best interests of the United States.<sup>9</sup>

An erroneous salary overpayment is created by an administrative error in the pay<sup>10</sup> of an employee in regard to the employee's salary.<sup>11</sup> When an administrative error is the cause of the erroneous salary payment of an employee, that fact does not relieve the overpaid employee from liability for the overpayment.<sup>12</sup> When an employee does not contest the validity of the debt, he or she may request that the debt be waived or forgiven.

The standard for 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<sup>13</sup>, and (2) whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment.<sup>14</sup>

#### Fault Standard

Respondent argues that the error leading to the overpayment was not her mistake, and therefore not her fault. Rather, the Department was responsible for the error when OHR conducted her on-boarding process. Since her actions did not lead to the error, Respondent contends it is unreasonable to hold her accountable for the debt.

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<sup>8</sup> See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (Dec. 12, 2005) at 2; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 2.

<sup>9</sup> See, e.g., *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 3; *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005) at 3; See also *In re Jerry*, Dkt. No. 05-29-WA, U.S. Dep't of Educ. (Feb. 16, 2006) at 4; *In re Travis*, Dkt. No. 06-57-WA, U.S. Dep't of Educ. (Apr. 5, 2007) at 2; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 2.

<sup>10</sup> 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.

<sup>11</sup> See *In re Anh-Chau*, Dkt. No. 05-01-WA, U.S. Dep't of Educ. (June 17, 2005), n.5; *In re S*, Dkt. No. 15-10-WA, U.S. Dep't of Educ. (Feb. 23, 2016) at 2. See also 34 C.F.R. Part 32 (2015).

<sup>12</sup> See *In re Robert*, Dkt. No. 05-07-WA, U.S. Dep't of Educ. (July 8, 2005), at 4, n.12; *In re S*, Dkt. No. 15-10-WA, U.S. Dep't of Educ. (Feb. 23, 2016) at 2.

<sup>13</sup> See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep't of Educ. (Dec. 12, 2005) at 2; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 2.

<sup>14</sup> See, e.g., *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 3; *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005) at 3; See also *In re Jerry*, Dkt. No. 05-29-WA, U.S. Dep't of Educ. (Feb. 16, 2006) at 4; *In re Travis*, Dkt. No. 06-57-WA, U.S. Dep't of Educ. (Apr. 5, 2007) at 2; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 2.

Next, Respondent asserts that she began attempting to resolve the matter within four days of the original email informing her of the error and remained diligent in communicating with OHR to resolve her situation and inquire about the letter of indebtedness. Respondent argues that, despite her due diligence and efforts, it took approximately eight months from the date of the original email notifying Respondent of the error related to her retirement system classification and the arrival of the promised letter of indebtedness detailing the procedure for Respondent to follow to resolve this matter. In support of her argument, Respondent submitted supporting documentation including emails detailing her efforts to contact OHR to resolve the situation and SF 50 forms detailing the time delay between the discovery of the error and correction of the error by OHR.

Respondent also argues that, as she is new to federal employment, it is unreasonable for the Department to expect that she would understand that the retirement code she was placed in was erroneous. Respondent asserts that she did not receive any information or training regarding the federal retirement system and that she relied on the expertise and experience of OHR personnel to place her in the correct retirement classification.

It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”<sup>15</sup> 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 Respondent, or the “fault standard.”<sup>16</sup> It is not enough, however, for Respondent to meet the fault standard. Respondent 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.<sup>17</sup>

In waiver cases, the fault standard is not limited to the acts or omissions indicating, fraud, misrepresentation, or lack of good faith by Respondent. It has a 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.”<sup>18</sup> Fault is determined by assessing whether a reasonable person should have known or suspected

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<sup>15</sup> *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.

<sup>16</sup> *See In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep’t of Educ. (Dec. 12, 2005) at 2; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 2.

<sup>17</sup> *See, e.g., In re Richard*, Dkt. No. 04-04-WA, U.S. Dep’t of Educ. (June 14, 2005) at 3; *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3; *See also In re Jerry*, Dkt. No. 05-29-WA, U.S. Dep’t of Educ. (Feb. 16, 2006) at 4; *In re Travis*, Dkt. No. 06-57-WA, U.S. Dep’t of Educ. (Apr. 5, 2007) at 2; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 2.

<sup>18</sup> *See In re Robert*, Dkt. No. 09-10-WA, U.S. Dep’t of Educ. (Nov. 19, 2009) at 3.

that he or she was receiving more than his or her entitled salary.<sup>19</sup> In assessing the reasonableness of Respondent's failure to recognize an overpayment, the Tribunal may consider the employee's position and grade level, newness to federal employment, and whether an employee has records at his or her disposal, which if reviewed, would indicate a salary overpayment.<sup>20</sup> Thus, each waiver request must be viewed in light of the particular facts and circumstances of that case.<sup>21</sup>

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. As an initial matter, this Tribunal recognizes that this salary overpayment was the result of an administrative error that does not reflect any fraud, misrepresentation, or lack of good faith by Respondent. OHR's September 30, 2015 letter, informing Respondent of the error shows that OHR was responsible for the error, including a formal apology from OHR to Respondent for the error and inconvenience it has caused. Additionally, the record also shows that Respondent did not have prior federal service, specialized knowledge of federal government human resources systems, or access to records that would readily indicate that Respondent was receiving a salary overpayment. As a result, 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 did not have prior knowledge of the administrative error leading to the debt at issue until she was informed of the error by OHR. In response to receiving the notice of the error, Respondent acted very quickly to address the issue once she had actual knowledge of the overpayments. Within four days of learning about the error in the coding for her retirement system, the Respondent sent an email to a representative of OHR, asking questions about the matter. Additionally, Respondent continued to contact the OHR regarding her situation periodically, specifically regarding when she was going to receive the letter of indebtedness referenced in OHR's September 30, 2015, letter and what steps she needs to take to resolve the situation.

In a situation like that faced by Respondent, where the overpayment arose because of an error in her retirement classification, this Tribunal has already concluded that the average employee generally should not be in a position to reasonably known about the overpayment. In *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dep't. of Educ. (Aug. 4, 2009), *In re T*, Dkt. No. 13-40-WA, U.S. Dep't. of Educ. (Dec. 5, 2013), *In re K*, Dkt. No. 15-40-WA, U.S. Dep't. of Educ. (July 24, 2015), and *In re A*, Dkt. No. 15-43-WA, U.S. Dep't of Educ. (Sept. 4, 2015), this Tribunal has repeatedly held that knowing the proper retirement classification for your employment is not something the average employee, inexperienced in human resources issues, is charged with knowing.<sup>22</sup> In the present matter, Respondent was originally appointed to a

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<sup>19</sup> See *In re Tammy*, Dkt. No. 05-20-WA, U.S. Dep't of Educ. (November 9, 2005) at 3.

<sup>20</sup> See *In re Veronce*, Dkt. No. 05-14-WA, Dkt. No. U.S. Dep't of Educ. (November 9, 2005) at 5-6.

<sup>21</sup> See *Id.* at 5.

<sup>22</sup> Contrast *In re L*, Dkt. No. 14-70-WA, U.S. Dept. of Educ. (Dec. 27, 2012) where a human resources specialist was presumed to have more knowledge than the average employee about

position in the Office of Legislation and Congressional Affairs and subsequently reassigned to a position in the Office of Elementary and Secondary Education. Nothing about the positions, training, or experience of Respondent indicates that she would have any specialized knowledge of human resources matters like retirement classification systems. For an employee like Respondent who is inexperienced in human resources matters, it would be unreasonable to find that she knew or should have known that she was being overpaid given the obscurity of the rule underlying the debt at issue.<sup>23</sup> As a result, an incorrect retirement classification would not be clear to Respondent, and she should not be held at fault. Thus, she has met the fault standard.

### Equity and Good Conscience Standard

When determining whether to grant a waiver, however, it is not enough to meet the fault standard. To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.<sup>24</sup> Beyond this framework, there are no rigid rules for governing equity and good conscience.<sup>25</sup> This Tribunal must “balance the equities” by considering a number of factors to determine whether repayment would be inequitable in light of the circumstances.<sup>26</sup> The factors weighed by the tribunal include the following: whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; whether recovery of the claim would impose an undue financial burden on the debtor; and whether the cost of collecting the claim equals or exceeds the amount of the claim.<sup>27</sup> These factors are neither exhaustive, nor mutually exclusive, and, depending upon the circumstances, Respondent may raise other factors pertinent to equity and good conscience.

Respondent argues that collection of this debt would go against equity and good conscience because it would result in an undue financial hardship for her. Specifically, she is resigning from her job at Department and moving across the country to help her family due to an unexpected family crisis. Respondent does not have another source of income or offer of employment at this time. The combination of the expenses from moving across the country and the lack of employment for a source of income means that she has to survive on her savings until she can find new employment. Having to repay the debt would be difficult and place a great strain on her. Additionally, the amount of the debt greatly exceeds her savings.

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matters relating the processing of retirement classification by the Department’s human resources office.

<sup>23</sup> See *In re Veronce*, Dkt. No. 05-14-WA, Dkt. No. U.S. Dep’t of Educ. (November 9, 2005) at 5-6; *In re Francisco*, Dkt. No. 07-154-WA, U.S. Dep’t of Educ. (Feb. 15, 2008) at 4.

<sup>24</sup> See 5 U.S.C. § 5584; *In re Anh-Chau*, Dkt. No. 05-01-WA, U.S. Dep’t of Educ. (June 17, 2005) at 5.

<sup>25</sup> *In re T*, Dkt. No. 13-40-WA, U.S. Dep’t of Educ. (Dec. 5, 2013) at 3.

<sup>26</sup> *In re Cynthia*, Dkt. No. 05-06-WA, U.S. Dep’t of Educ. (Sept. 14, 2005) at 5; *In re Carolyn*, Dkt. No. 06-04-WA, U.S. Dep’t of Educ. (June 28, 2006) at 5; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 3.

<sup>27</sup> See *In re Shelley*, Dkt. No. 06-25-WA, U.S. Dep’t of educ. (Nov. 28, 2006) at 4; *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dept. of Educ. (Aug. 4, 2009) at 3.

Although there are no rigid rules governing the equity standard,<sup>28</sup> the combination of loss of employment to help her family through a crisis, lack of a source of income for the foreseeable future until new employment can be obtained, and expenses from having to move across the country to help her family demonstrate the potential financial hardship that repayment of this debt might impose on her and affect her ability to support herself.<sup>29</sup> The undue financial burden is a significant factor supporting Respondent's position that repayment would be inequitable.<sup>30</sup> Additionally, Respondent was diligent in her efforts to ascertain what was going in her situation throughout the entire process, and her conscientiousness merits some consideration under the equity standard.<sup>31</sup> Furthermore, this Tribunal is persuaded based on Respondent's evidence that repayment of this debt would cause an inequitable and undue financial burden. Accordingly, requiring Respondent to repay a debt of \$1,491.45 under these demonstrated aforementioned circumstances would impose an undue financial burden on Respondent and thus, collection of the debt would go against equity and good conscience.

### **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 **\$1,491.45** is **HEREBY GRANTED**.

So ordered this 29th day of July 2016.

/s/

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Greer Armandroff  
Waiver Official

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<sup>28</sup> *In re T*, Dkt. No. 13-40-WA, U.S. Dep't of Educ. (Dec. 5, 2013) at 3.

<sup>29</sup> *See generally* 34 C.F.R. § 31.5(b)(3) (2015) (factors that may be considered for undue financial hardship).

<sup>30</sup> *See In re C*, 15-27-WA, U.S. Dep't of Educ. (June 3, 2015) at 5; *In re J*, 14-12-WA, U.S. Dep't of Educ. (Sept. 25, 2015) at 4.

<sup>31</sup> *In re Cheryl*, Dkt. No. 05-28-WA, U.S. Dep't of Educ. (Feb. 17, 2006) at 4; *See also In re Travis*, Dkt. No. 06-57-WA, U.S. Dep't of Educ. (Apr. 5, 2007) at 4.