



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

Docket No. 16-36-WA

RB,

Waiver Proceedings

Respondent.

DECISION GRANTING WAIVER IN PART, DENYING WAIVER IN PART

On August 5, 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, issued by the Department of the Interior (DOI), providing notice of an overpayment of salary to Respondent in the total amount of **\$725.67**. Respondent indicates the debt arose because of an erroneously processed within-grade step increase which persisted from pay period 7 until it was canceled during pay period 14.

By order dated August 8, 2016, Respondent was granted until August 26, 2016, to file any additional documentation in support of this waiver request. Respondent has submitted a letter setting forth arguments, a copy of the debt letter, an email from the Office of Human Resources explaining the debt, and copies of earnings and leave statements.

In a waiver proceeding, the debtor argues that he or she should not be required to repay the debt because of equitable considerations and 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.² This decision constitutes a final agency decision.

¹ *In re E*, Dkt. No. 15-7-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 2.

² *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.”³ 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.⁴ Failure to demonstrate both factors is grounds for denial of a waiver claim.⁵

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.⁶ A respondent may demonstrate a financial hardship if repayment would result in a loss of medical care, housing, or other life sustaining needs.

Respondent makes two arguments in favor of a waiver. First, she argues that she satisfies both factors for a waiver of the entire debt. She argues she had clean hands in the matter, because she “was not informed or notified of this error until recently,” but upon learning of it immediately contacted the appropriate staff to report it.⁷ She also argues that she did not set aside the excess salary and will have difficulty repaying it because she has a financial hardship related to family expenses.⁸

Second, Respondent argues that the calculation of her debt is erroneous. The attachment to the debt letter shows overpayment amounts for pay periods 5 and 6. However, earnings and leave statements submitted by Respondent show that she erroneously received excess pay starting in pay period 7.

Regarding Respondent’s first argument, she has not submitted sufficient evidence to demonstrate that repayment would be inequitable. “There is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not

³ *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.

⁴ *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3, 5.

⁵ *E.g.*, *In re E*, Dkt. No. 15-7-WA, U.S. Dep’t of Educ. (Mar. 31, 2015) at 6–7.

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

⁷ Letter from Respondent dated August 12, 2016.

⁸ *Id.*

tantamount to showing a financial burden such that the equities call for a waiver.”⁹ Despite her assertion of hardship, Respondent has not submitted any documentation showing with specificity what live sustaining needs she would lose as a result of repayment. Therefore, Respondent has not shown that repayment of the debt is against equity and good conscience.

Regarding Respondent’s second argument, her submission of earnings and leave statements clearly shows that the within-grade increase, and accompanying overpayments, took effect during pay period 7. These records contradict both the debt letter and the Human Resources email explaining the debt, both of which claim Respondent was overpaid in pay periods 5 and 6. In response to the waiver request, DOI has submitted only a copy of the debt letter, with no additional explanation for this discrepancy.

Because the calculation of Respondent’s debt is clearly erroneous, I find it inequitable for her to repay any debts allegedly accrued during pay periods 5 and 6. I find that she acted in good faith with regard to these supposed debts because her earnings and leave statements from pay periods 5 and 6 correctly listed her grade, step, and salary. Therefore, I find it equitable to grant a waiver of \$198.40 of Respondent’s debt.

Respondent has not established the elements necessary to justify a waiver of her entire debt. However, she has established that it would offend equity and good conscience to assess the entire debt as calculated by DOI. Accordingly, Respondent’s request for a waiver is granted in part (\$198.40 waived), and denied in part (\$527.27 remaining). This decision constitutes a final agency action.

Charles S. Yordy III
Waiver Official

Dated: September 19, 2016

⁹ *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).