



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

---

In the Matter of

**Docket No. 16-40-WA**

**L,**

Waiver Proceedings

Respondent.

---

**Decision Granting Waiver Request**

On August 9, 2016, the Office of Hearings and Appeals (OHA) received a request for a waiver of a debt, dated that day, from Respondent, a Department employee, in the above-captioned proceedings. The request came in response to the receipt of a debt letter, dated August 1, 2016, from the Department of the Interior (DOI) providing notice of an overpayment of salary to Respondent in the total amount of **\$321.50** arising from the salary overpayments (Debt ID 62151607074). Respondent asserts that this overpayment arose as a result of a failure by the Department's Office of Human Resources (OHR) to process his health insurance election in a timely manner.

On August 10, 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, which he filed the same day, August 10, 2016.

I have reviewed what Respondent has filed, namely:

- (1) Respondent's August 9, 2016 request for a waiver;
- (2) Respondent's Sworn Statement, filed August 10;
- (3) A chain of emails sent on August 9, 2016 between Respondent, representatives from the benefits group within OHR and a DOI employee, submitted to this Tribunal on August 10, 2016;
- (4) A Debt Letter, dated August 1, 2016, from DOI;
- (5) An email chain of two emails, both dated July 15, 2016, between Respondent and representatives from the benefits group within OHR;
- (6) Respondent's Health Benefits Election Form, dated June 8, 2016;
- (7) A July 18, 2016 email to Respondent giving notice of a new document being added to his EOPF folder; and
- (8) A screen shot of Respondent's EOPF folder showing the most recent document added on July 18, 2016.

Having reviewed the submitted information, I conclude that Respondent has met his burden of showing both that he is without “fault” for these overpayments, and that requiring repayment would be inequitable. Accordingly, Respondent’s request for waiver is granted.

In a waiver proceeding, the debtor assumes<sup>1</sup> the validity of the debt, but argues that he or she should not be required to repay the debt 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.<sup>2</sup> 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),<sup>3</sup> which, thereby, exercises waiver authority and jurisdiction on behalf of the Secretary of Education to waive<sup>4</sup> claims of the United States against a former or current employee of the Department.<sup>5</sup> The undersigned is the

---

<sup>1</sup> Assuming the validity of the debt for the purposes of the waiver proceedings does not preclude Respondent from challenging the validity of the debt in a separate pre-offset hearing.

<sup>2</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. 13-40-WA (Dec. 5, 2013) at 2 n.5.

<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 OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

<sup>4</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>5</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 Office of Hearings & Appeals website at: <http://oha.ed.gov/overpayments.html>.

authorized Waiver Official who has been assigned this matter by OHA.<sup>6</sup> Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

## PROCEDURAL HISTORY

On May 31, 2016, Respondent began working in the Office of the Inspector General at the Department. On June 8, 2016, Respondent submitted his “Health Benefits Election Form,” indicating that he was electing to enroll in the Blue Cross and Blue Shield Basic Option for Self-Plus-One coverage. The Form indicates that it was received on June 9, 2016 and the action enrolling Respondent in his elected program was effective on June 12, 2016. After not hearing anything about having health benefits for over a month, on July 15, 2016, Respondent contacted a representative from the benefits group in OHR. That same day, Respondent was informed that his benefits form was not processed. Three days later, on July 18, 2016, Respondent received notice that a document had been added to his EOPF folder, specifically his Health Benefits Registration Form. On August 2, 2016, Respondent first received his enrollment package and insurance cards from Blue Cross and Blue Shield.

In a Debt Letter dated August 1, 2016, DOI informed Respondent that he owed a debt as a result of salary payments for health benefits not taken during pay periods 14 (June 12 – June 25, 2016) and 15 (June 26 – July 9, 2016). In an August 9, 2016 email, a representative from OHR has explained that the overpayments arose from OHR making the effective date for Respondent’s health benefits June 12, 2016.

Respondent has stated that he has a pregnant wife, and as a result of him, as far as he knows, not having health coverage for almost 2 months, he canceled two doctor’s visits with her OB and one sonogram. Additionally, because Respondent and his pregnant wife could not be without health insurance coverage, Respondent’s wife enrolled in separate health insurance coverage from her employer. Respondent argues that (1) because he was forced, by the Department’s failure to properly enroll him in his elected health insurance program, to get coverage through his wife’s employer; and (2) therefore, he does not want health coverage from the Department anymore and does not believe he owes money for coverage in June and July which he did not believe he could not use.

On August 9, 2016, OHA received Respondent’s request for a waiver of this debt from DOI, where Respondent had sent the request. After an Order Governing Proceedings was issued, Respondent timely responded and on August 15, 2016 indicated that he had submitted all he wishes to submit in this matter, closing the file.

---

<sup>6</sup> See 5 U.S.C. § 5584(b) (2012) (noting the authority held by the authorized official in waiver cases).

## 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.<sup>7</sup>

It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”<sup>8</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 the debtor (fault standard).<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</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. Therefore, the only matter left to be considered is whether Respondent knew or should have known that he should have had deductions in his pay during pay periods 14 and 15 in 2016 for health coverage provided through the Federal Employees Health Benefits Program. Respondent has demonstrated that he did not know he had health coverage before July 15, 2016. This is demonstrated by (1) his email to OHR on July 15, 2016 inquiring about his health insurance coverage; (2) the fact that he canceled two doctor’s appointments and a sonogram appointment for his pregnant wife believing he was without coverage; and (3) that Respondent and his wife purchased alternative health insurance coverage.

Additionally, there is no indication that Respondent had any reason to know he was covered by health insurance between June 12 and July 9, 2016, the time period in question, and, therefore, that he should have any deductions during that time period to pay for the coverage. It

---

<sup>7</sup> See e.g., *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005).

<sup>8</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>9</sup> See *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep’t of Educ. (Dec. 12, 2005).

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

<sup>11</sup> *In re J.*, Dkt. No. 15-50-WA, U.S. Dep’t of Educ. (Nov. 9, 2015) at 6 n.14.

was not until July 18, 2016 that Respondent received notice that his health benefits form had been processed. Having properly elected coverage effective June 12, 2016 Respondent may have had health insurance coverage during the time period in question, even if it was before his forms were processed. There is no reason, however, to determine that Respondent, an employee in the Department's Office of Inspector General, should have had any reason to believe that he had health coverage before his election form was processed. And it has been held by this Tribunal that "even where an employee enjoys the benefit unpaid FEHB [federal employee health insurance] coverage, waiver of a FEHB debt may be appropriate" where there would be no "readily apparent overpayment" on employee's leave and earning statement.<sup>12</sup> In short, the submitted documentation indicates that Respondent did not know and, under these circumstances, should not have known that he had health insurance coverage during pay periods 14 and 15, for which there should have been deductions from his pay. Therefore, Respondent satisfies the "fault" standard.

For a waiver to be granted, it is not enough to meet the fault standard. In addition, this Tribunal must also "balance the equities" by considering a number of factors, to determine whether repayment would be inequitable.<sup>13</sup> In this matter, however, I have determined that requiring repayment would be inequitable. Respondent ended up in a situation where, through no action or inaction of his own, he was seemingly without insurance when he had a pregnant wife. As a result, Respondent's wife canceled two OB visits and a sonogram. The U.S. Department of Health and Human Services has indicated how essential prenatal health care is, noting that "babies of mothers who do not get prenatal care are three times more likely to have a low birth weight and five times more likely to die than those born to mothers who do get care."<sup>14</sup> Additionally, to avoid an "individual shared responsibility payment" fee, Respondent and his wife are required to have health insurance.<sup>15</sup> Justifiably needing health insurance coverage, Respondent and his wife purchased health insurance through her employer. Requiring Respondent and his wife to pay for double coverage under the circumstances would be inequitable.

Because Respondent is both without "fault" for the overpayment and requiring repayment of the debt would be inequitable, Respondent's request for a waiver is granted. This decision constituted a final agency decision.

## ORDER

---

<sup>12</sup> *In re Robin*, Dkt. No. 07-114-WA, U.S. Dep't of Educ. (Aug. 4, 2008) at 3; *see also In re Joanne*, Dkt. No 06-22-WA, U.S. Dep't of Educ. (May 1, 2007), at 2-3 (noting that a waiver is proper even if the employee receives the benefit of health care coverage if the employee is without fault and requiring repayment of the debt would be inequitable).

<sup>13</sup> *See In re A*, Dkt. 15-43-WA, U.S. Dep't of Educ. (Sept. 4, 2015) at 5.

<sup>14</sup> Office of Women's Health, U.S. Dep't. of Health and Human Services, *Prenatal Care Fact Sheet* (July 16, 2012), <http://womenshealth.gov/publications/our-publications/fact-sheet/prenatal-care.html>.

<sup>15</sup> *See Healthcare.gov, The Fee for Not Having Health Insurance*, <https://www.healthcare.gov/fees/fee-for-not-being-covered/> (last visited Aug. 25, 2016).

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 **\$321.50** is **HEREBY GRANTED**.

So ordered this 31st day of August, 2016.

---

Daniel J. McGinn-Shapiro  
Waiver Official