



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4616

TELEPHONE (202) 245-8300

FACSIMILE (202) 245-6931

In the Matter of

W,

Respondent.

Docket No. 17-24-WA

Waiver Proceedings

DECISION DENYING WAIVER

This decision concerns a notice of an overpayment of salary to Respondent in the total amount of **\$4,332.66**. According to Respondent, the debt arose because of a promotion from grade 12 step 4 to grade 13 step 4, which subsequently was corrected to grade 13 step 1. The debt accrued starting on September 15, 2016, and Respondent received notice of the error on March 23, 2017. An Office of Human Resources (OHR) employee indicated that OHR made a mistake resulting in the salary adjustment.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (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.”¹ 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.² The person seeking a waiver bears the

¹ *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.

² 5 U.S.C. § 5584(a) (2012); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3, 5.

burden of proof; failure to demonstrate both factors is grounds for denial of a waiver claim.³ 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.⁴

The record contains little evidence for weighing the first factor aside from Respondent's representations. Respondent asserts that she is "not familiar with the promotion process" and had no reason to suspect she was being paid at the wrong step until she was notified by OHR. Neither the Department of Education nor the Department of the Interior have made any attempt to show that the employee should have known of the overpayment or should have made any inquiry after overpayments began. There is no evidence in the record showing Respondent's tenure in federal employee or her work-related knowledge of payment and personnel rules. Based on the evidence before me, I find that Respondent did not act in bad faith by not inquiring about her promotion to one grade higher at the same step level.⁵ Therefore, Respondent satisfies the first factor.

The second factor requires a showing that collection of the debt would go against equity and good conscience. Respondent's only assertion regarding the second factor is that she adjusted her personal budget based on her pay at the grade 13 step 4 level. Therefore, her "financial commitments" will be "difficult to accommodate" if she repays the debt created by the overpayment. However, Respondent does not provide any evidence to support a finding that her financial circumstances are such that repaying the debt would go against equity and good conscience.⁶ "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."⁷

Respondent has not shown that repayment of the debt is against equity and good conscience. In the absence of such a showing, Respondent does not satisfy the second factor and there is no ground for granting a waiver. Accordingly, Respondent's request for a waiver is denied. This decision constitutes a final agency action.

³ E.g., *In re E*, Dkt. No. 15-7-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6-7; *In re Robin*, Dkt. No. 07-114-WA, U.S. Dep't of Educ. (Aug. 4, 2008) at 3.

⁴ *In re E*, Dkt. No. 15-7-WA at 6-7.

⁵ See *In the Matter of Pedro*, Dkt. No. 06-78-WA at unpaginated 4 (citing the multi-step process for calculating the correct step of an employee who receives a grade increase, and noting that an "employee typically is not expected to be aware of and understand the rules regarding the determination of his or her step level upon a promotion").

⁶ See *In the Matter of Mary*, Dkt. No. 04-03-WA at 5 (indicating that an undue financial hardship could potentially be demonstrated by "submit[ting] information about other financial indebtedness, money constraints, unexpected expenses, or other such contingencies").

⁷ *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).

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 **\$4,332.66** is **HEREBY DENIED**.

So ordered this 28th day of June 2017.

/s/
Charles S. Yordy III
Waiver Official