



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS  
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In the Matter of

**Docket No. 17-49-WA**

**RM,**

Waiver Proceedings

Respondent.

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**DECISION GRANTING WAIVER IN PART, DENYING WAIVER IN PART**

This decision concerns a notice of an overpayment of salary to Respondent in the gross amount of **\$1,455.04**. According to Respondent, the debt arose because of an erroneous step increase from GS-07 step 1 to GS-07 step 2. The debt letter indicates that Respondent must repay debts accrued from PP03 through PP16 in 2017. Respondent has presented evidence that payroll from PP03 through PP14 was disbursed at the erroneous GS-07 step 2 amount. At the start of PP15, Respondent was correctly promoted to GS-09 step 1 and was paid at that amount during PP15 and PP16. Subsequently, payroll personnel apparently erred by setting Respondent to the GS-07 step 1 level, undoing the promotion for PP17 through PP20.

Based on the following analysis, I will grant the waiver in part and deny it in part.

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

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.<sup>1</sup> It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”<sup>2</sup> The person seeking a waiver bears the burden of proof; failure to demonstrate both factors is grounds for denial of a waiver claim.<sup>3</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.<sup>4</sup>

Regarding the first factor, there is no evidence in the record showing that Respondent should have known the step increase was erroneous. Respondent does not appear to have any specialized payroll or human resources knowledge. Furthermore, the SF-50 applying the step increase indicated that the most recent such action occurred more than a year prior. Therefore, it would be reasonable for Respondent to believe the step increase was processed correctly. Neither the Department of Education nor DOI have made any attempt to show that the employee should have known of the overpayment or should have made any inquiry after overpayments began. 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 makes no assertion that repayment of the debt presents a financial hardship. Indeed, Respondent does not argue that repayment of the debt would be inequitable, only that Respondent does not “feel...responsible for this debt.” In the absence of such a showing, Respondent does not satisfy the second factor and there is no ground for waiving the debt accrued as a result of the erroneous step increase.

Nevertheless, I find that the debt letter incorrectly includes PP15 and PP16 in its calculation of Respondent’s overpayment. The evidence provided by Respondent confirms the Department of Education’s intent to promote Respondent to GS-09 step 1 effective in PP15. Neither the Department of Education nor DOI has provided information to Respondent that would allow for notice and an opportunity to refute the debt cited in PP15 and PP16. I concluded that the payments cited in the debt letter in PP15 and PP16 were not overpayments. I find it inequitable for Respondent to repay amounts that were not overpayments.<sup>5</sup> Thus, I will waive the gross amounts cited by the debt letter from PP15 and PP16.<sup>6</sup> This decision constitutes a final agency action.

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<sup>1</sup> 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.

<sup>2</sup> *In re Danea*, 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>3</sup> *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.

<sup>4</sup> *In re E*, Dkt. No. 15-7-WA at 6–7.


<sup>5</sup> These payments include two regular salary payments of \$346.32 each, a holiday payment of \$38.48 and an annual leave payment of \$38.48, totaling \$769.60.

<sup>6</sup> The debt letter does not seek repayment for any funds connected to the erroneous demotion of Respondent to the GS-07 step 1 level for PP17 through PP20. Therefore, that matter is not before me and I have no authority to correct Respondent’s salary for those pay periods.

ORDER

Pursuant to the authority of 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the debt to the United States Department of Education cited from PP15 and PP16 in the gross amount of **\$769.60** is **HEREBY GRANTED**. Respondent's request for waiver of the remaining debt in the gross amount of **\$685.44** is **HEREBY DENIED**.

So ordered this 5<sup>th</sup> day of December 2017.

  
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Charles S. Yordy III  
Waiver Official