



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
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In the Matter of

S,

Respondent.

Docket No. 18-01-WA
Debt ID M1733400005

Waiver Proceedings

DECISION DENYING WAIVER

This decision concerns a notice of an overpayment of salary to Respondent in the gross amount of **\$1,636.56**. The Interior Business Center (IBC) identified this debt as Debt ID M1733400005. According to an e-mail from personnel with the Department of Education's (ED's) Office of Human Resources, the debt arose because "the wrong retirement code was keyed in [Respondent's] appointment action." Therefore, Respondent underpaid each pay period into the Federal Employee Retirement System. The debt letter from IBC indicates that Respondent must repay debts accrued from PP14 through PP22 in 2017.

Based on the following analysis, I will deny the waiver.¹

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.

¹ The Office of Hearings and Appeals reassigned this waiver case from Daniel McGinn-Shapiro to me on February 22, 2018. I discovered a complete record, including all submissions permitted by Mr. McGinn-Shapiro in his preliminary orders. After consideration of that record, I will proceed with issuance of this final decision.

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.² It is well established that “no employee has a right to pay that he or she obtains as a result of overpayments.”³ The person seeking a waiver bears the burden of proof; failure to demonstrate both factors is grounds for denial of a waiver claim.⁴ 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.⁵

Respondent argues extensively that he had no reasonable way to detect the overpayment which began immediately upon his onboarding. Furthermore, he indicates he acted in good faith to resolve the situation as soon as he became aware of it. ED makes no assertion that Respondent contributed to the circumstances resulting in an overpayment. I find that Respondent satisfies the first factor.

The second factor requires a showing that collection of the debt would go against equity and good conscience. Respondent argues that repayment of the debt would “create an undue hardship” and “place a tremendous financial strain on me and my family.” He states that his family of four has relied upon his erroneous net pay since his onboarding. In particular, he submits evidence showing that his family’s biweekly childcare expenses are \$1,360.00.

Despite Respondent’s submissions, the record does not support a finding that collection of the debt would go against equity and good conscience. Respondent’s childcare costs alone, without evidence of Respondent’s household assets, total income from two working parents, and other expenses, do not demonstrate that repayment would create an undue hardship. “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.”⁶ Without additional context favoring a waiver, I cannot conclude that repayment would constitute an “undue” hardship that would be unconscionable for the government to collect. Accordingly, I will deny Respondent’s request for a waiver.

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.

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 E.g., *In re E*, Dkt. No. 15-07-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.

⁵ *In re E*, Dkt. No. 15-07-WA at 6–7.

⁶ *Id.* 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 debt to the United States Department of Education in the gross amount of **\$1,636.56** is **HEREBY DENIED**.

So ordered this 13th day of March 2018.

Charles S. Yordy III
Waiver Official