



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

DM

Respondent.

Docket No. 19-41-WA

Waiver Proceeding

Debt ID: 91271673119

DECISION DENYING WAIVER

Respondent has filed an overpayment waiver request seeking a waiver of a \$1,358.08 debt identified by Debt ID 91271673119. According to the documents submitted by Respondent, this debt arose due to erroneous processing of the 2019 pay adjustment. While Respondent's pay adjustment should have been processed effective March 3, 2019, the Department initially processed it with an effective date of January 6, 2019. Reversal of this error resulted in the overpayment at issue in this case.

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

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.¹ 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

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.² Among other things, that notice must explain the "origin, nature and amount of the overpayment."³ It must also include Government records on which the overpayment

¹ The Department's policy is set forth in its Handbook for Processing Salary Overpayments. U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

² 34 C.F.R. § 32.3.

³ *Id.* § 32.3(a).

determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.⁴ In subsequent filings, Respondent demonstrated an understanding of the nature of the debt. Accordingly, I conclude Respondent had sufficient notice of the debt to file a waiver request, and I will proceed with my analysis of that request.

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) the fault standard: whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) the equity standard: whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment.⁵

First, regarding the fault standard, Respondent asserts that the debt is “no fault of mine and clearly an administrative error.” Respondent indicates that “multiple eOPF notifications” were issued and that Respondent “contacted the HR Office on several occasions for clarity.” An email from the Department indicates that 2019 pay adjustments “were initiated for retroactive pay to January 6, 2019, however the retroactive pay should have been effective as of March 3, 2019.” There is no indication in the accompanying explanation of the debt from the Department that Respondent knew or should have known that the pay adjustment was processed erroneously. Furthermore, there is no information in the file to indicate that Respondent knew or should have known that the correct date for the pay adjustment was March 3 instead of January 6. Based on the evidence presented and the circumstances described above, I conclude that Respondent meets the fault standard.

Second, I turn to the equity standard. Respondent makes no assertion that repayment of the debt would be inequitable. Clearly the overpayment in this case is the result of the Department’s administrative error, but the general rule requires the employee to repay the debt unless doing so would be inequitable.⁶ There are no rigid rules for determining whether repayment is equitable, but factors considered generally include: whether the debt is substantial; whether repayment would be unconscionable in the Respondent’s unique circumstances; whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; and whether collection of the debt would impose an undue financial burden.⁷

In this case, Respondent does not present evidence weighing in favor of any of the factors cited above. “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.”⁸ Respondent does not demonstrate why repayment would be inequitable, nor does the record clearly show it. In the absence of such a showing, Respondent does not satisfy the second factor and there is no ground for granting a waiver. Accordingly,

⁴ *Id.* § 32.3(g).

⁵ 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.

⁶ See *In the Matter of R*, Dkt. No. 14-54-WA, U.S. Dep’t of Educ. (Jan. 12, 2015) at 4 (citing *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep’t of Educ. (Oct. 24, 2013) at 6; *In re Sarah*, 11-07-WA, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3).

⁷ *In the Matter of J*, Dkt. No. 17-04-WA, U.S. Dep’t of Educ. (Mar. 23, 2017), at 5 (citing *In re David*, Dkt. No. 05-22-WA).

⁸ *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).

Respondent's request for a waiver is denied. This decision constitutes a final agency action.

ORDER

Pursuant to the authority at 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the debt to the United States Department of Education captioned Debt ID 91271673119 is **HEREBY DENIED**. Respondent may challenge the validity of or amount of the debt, or argue that an involuntary payment schedule will cause extreme financial hardship, by filing a written request for a pre-offset hearing within 10 days of receipt of this decision in accordance with the procedures described at <https://oha.ed.gov/overpayment-faqs/>.⁹

So ordered this 26th day of July 2019.

Charles S. Yordy III
Waiver Official

⁹ 34 C.F.R. § 32.6(b).