UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
TELEPHONE (202) 245-8300

In the Matter of

18-51,

Respondent.

Docket No. 18-51-OF
Debt IDs: [redacted 3]
[redacted 2]
[redacted 1]

Overpayment/Pre-offset Hearing

Appearances: [redacted], Respondent, pro se.
Tracey Sasser, Office of the General Counsel, U.S. Department of Education[1]
Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

The Office of Administrative Law Judges has current jurisdiction over the above referenced matter.[2] The Respondent, a former United States Department of Education (Department)

[1] The Department was initially represented by another attorney of the Office of the General Counsel. After the Department's brief was filed, that attorney separated from the Department of Education and a Change in Counsel was filed.

[2] The Department's policy is set forth in the U.S. Department of Education's Administrative Communications System, Handbook for Processing Salary Overpayments (ACS-OM-04, last revised January 19, 2012). An erroneous payment to a Federal employee, or former Federal employee, creates a debt to the United States that requires collection or, in certain instances, allows waiver and various laws are available to the United States to administratively collect or waive these types of debts (5 U.S.C. §§ 5514 and 5584, 31 U.S.C. §§3711 and 3716. *See also,* Debt Collection Act of 1982 (Pub. L. 97-365, October 25, 1982), Federal Debt Collection and Procedures Act (Pub. L. 101-647, Title XXXVI, November 29, 1990), and Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Section 31001, April 26, 1996)).

Historically, these administrative proceedings were the shared responsibility of the Comptroller General of the former General Accounting Office, now the Government Accountability Office, and the various Executive agencies, if the amount of the debt was below a certain dollar amount (*See, https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/waiving-overpayments/*). With Passage of the General Accounting Office Act of 1996 (Pub. L. 104-316, Section 103(d)), the authority for administrative proceedings to collect or waive these types of debts was given to the Director of Office and Management and Budget (OMB). The Director of OMB redelegated this authority to the Executive Agencies by memorandum, dated December 17, 1996, and the dollar limit previously imposed for jurisdiction by the Executive agencies was eliminated (*See,* https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/foia/gc_dec17.pdf.)

employee, was a [redacted], until to her separation from Federal service on June 7, 2018. Prior to that, beginning in about February 2018, the Respondent was on extended leave related to ongoing medical concerns. While on extended leave, the Respondent did not have access to the Department's time and attendance system (WebTA) and therefore, her time records were generated at the direction of the Respondent's immediate supervisor and a designated timekeeper from the Respondent's Principal Office Component (POC). The Department asserts that on August 14, 2018, the Department's Debt Management Coordinator issued three notices of overpayment to the Respondent (OES Documents 19, 20, and 21).[3]

- Under Debt ID [redacted 3], a debt in the amount of $407.70 (representing total gross pay adjustment of $472.70 minus applicable recoverables from Medicare, OASDI, Retirement, and TSP) was identified as a result of a time sheet correction, processed in pay period 11 of 2018. That correction adjusted time and attendance entries for pay period 7 of 2018 (OES Document 21). The Department identified this debt as Debt #3 in its brief.
- Under Debt ID [redacted 2], a debt in the amount of $1,402.66 (representing total gross pay adjustment of $1,548.50 minus applicable recoverables of Federal and State withholdings, Medicare, OASDI, Retirement, TSP, FEGLI (regular, additional, optional and family) and plus the amount of the health benefit paid on behalf of the Respondent) was identified as a result of time sheet corrections, processed in pay period 12 of 2018. That correction adjusted time and attendance entries for pay periods 6, 7, 8, and 10 of 2018 (OES Document 20).[4] The Department identified this debt as Debt #2 in its brief.
- Under Debt ID [redacted 1], a debt in the amount of $171.84 was identified as the result of a health benefit paid by the Department during pay period 12 of 2018 (OES Document 19). The Department identified this debt as Debt #1 in its brief.

The Department asserts the total amount of these debts owed by the Respondent is $1,982.20.

On August 22, 2018, the Respondent filed a request for waiver related to the alleged overpayment following time sheet corrections processed in pay period 12 of 2018 (OES Document 1).[5] A waiver proceeding was docketed and assigned to a Waiver Official.[6] Thereafter the OHA sought clarification from the Respondent to determine if she wished to pursue a pre-offset hearing. On August 30, 2018, the Respondent clarified that she was also requesting a pre-offset hearing (OES Document 2). While the initial request provided some background

[3] Despite Department policy that notices of overpayments that are issued to current or former Department employees are to be mailed by U.S. Mail, certified, return receipt, there is no proof that these notices were issued consistent with the Department's policy.

[4] The Department's notice identifies this debt as resulting from corrections made to timesheets for pay periods 06 through 10, but the Transferred Bill Information, that was included with the notice, crossed off "201809" and there are no specific pay code adjustments for pay period 9 of 2018 enumerated therein.

[5] The Respondent included multiple emails dating back to May 29, 2018 between the Respondent, her immediate supervisor, the Department's Debt Management Coordinator, and an employee at the Department of Interior (DOI), Interior Business Center (IBC), the Department's agent for payroll processing. It seems the DOI issued a bill to the Respondent sometime in May 2018. On May 29, 2018, the Respondent began making inquiries to her immediate supervisor, with a copy to other senior level officials at the Department, trying to gain an understanding of what was occurring in relation to the processing of time sheet corrections in pay period 12, 2018.

[6] The Waiver proceeding is docketed under 18-49-WA and Daniel McGinn-Shapiro was assigned as the Waiver Official.

information about an overpayment and other documentation, it did not include a full copy of any notice related to an overpayment.[7]

On August 31, 2018, a scheduling order (Order Governing Proceeding) was issued requiring the Department to file a complete copy of the notice provided to the Respondent and all government records supporting the alleged overpayment determination along with the Department's brief (OES Document 3).

The scheduling order also advised the Respondent that the Department's regulations allowed the imposition of an involuntary repayment schedule of 15% of disposable income from each pay period until any established debt is paid in full (*Id.*). Therefore, the scheduling order allowed the Respondent an opportunity to submit a narrative or brief in response to the Department's brief and to also submit financial information in support of her claim that repayment at the involuntary repayment schedule of 15% of disposable income would result in extreme financial hardship.[8]

II. Issues

1. Has the Department established the validity of debts under Debt IDs: [redacted 3], [redacted 2], and [redacted 1]?
2. In the absence of an acceptable voluntary repayment agreement, has the Respondent established extreme financial hardship sufficient to obtain relief from imposition of an involuntary repayment schedule?

III. Legal Framework/Applicable Laws and Regulations

A. Debt Collection and Administrative Offset

The Federal Claims Collection Act of 1966 (Pub. L. 89-905, July19, 1966) was enacted to avoid unnecessary litigation for the collection of claims of the United States. In its initial form, it required heads of agencies to attempt collection of all claims for money or property arising out of the activities of, or referenced to, the agencies. A subsequent act revised, codified, and enacted, without substantive change, general and permanent laws related to money and finance (Pub. L.97-258, September 13, 1982) wherein the Federal Claims Collection Act was merged into Title 31 of the United States Code, specifically, 31 U.S.C. §3711, collection and compromise.[9]

Consistent with the original intent of the Federal Claims and Collection Act of 1966, the current statute requires the head of an executive agency to attempt to collect a claim of the United States Government for money or property arising out of the activities of, or referred to the agency (31 U.S.C §3711(a)(1)). The head of the agency must act under regulations prescribed by the head of

[7] Although employees appealing an overpayment are required to include a copy of the overpayment notice with the request, historically that has not always been done. In the past, as a matter of administrative efficiency, when a Respondent did not include a copy of the notice, OHA would request a copy of overpayment notices from the Department's payroll agent if the employee is currently employed with the Department.
[8] Extensions of time were granted and while the dates of submissions in the initial scheduling order were changed, the general requirements were not.
[9] This section was subsequently amended by the Debt Collection Improvement of 1996 and the General Accounting Office Act of 1996.

the agency and the standards that the Attorney General and the Secretary of Treasury prescribe (31 U.S.C. § 3711(d)(1) and (2)).[10]

The Department's regulations are found at Part 32 of Title 34 of the Code of Federal Regulations. In 2005, using the Administrative Communications System (ACS), the Department established policy in relation to salary overpayments with the issuance of the Handbook for Processing Salary Overpayments (ACS-OM-04), hereinafter referred to as the Handbook.

A. Notice Requirements

The initiating Federal statute for collection of a claim related to an overpayment to a Federal employee requires that the head of the agency provide notice prior to collection by administrative offset (31 U.S.C. §3716). The statute specifically requires that the notice be in writing, identify the type and amount of the claim, the intention of the agency to collect by administrative offset, and an explanation of the rights of the debtor. The agency must provide an opportunity to inspect and copy the records of the agency related to the claim, an opportunity for review within the agency of the determination of the claim, and an opportunity to make a written agreement with the agency to repay the amount of the claim (*Id.*).

The Department regulations provide that the pre-offset notice be in writing, establish the origin, nature, and amount of the overpayment, how interest is charged, and how administrative costs and penalties will be assessed (34 C.F.R. § 32.3(a) and (b)). The regulations require the Department to demand repayment while providing the opportunity to enter into a written repayment agreement with the Department (34 C.F.R. § 32.3(c)). The regulations require that the debtor to be advised of the right to the right to request a waiver if waiver of repayment is authorized by law (34 C.F.R. § 32.3(d)). The regulations require that the Department identify the intention to deduct up to 15% of the employee's disposable pay to recover the overpayment, if a waiver is not granted and the employee has not entered into a written repayment agreement, and to specify the amount, frequency, approximate beginning date and duration of the intended deduction (34 C.F.R. § 32.3(e) and (f)). The Department is required to provide the government records supporting the debt with the notice or advise how those records will be made available to the employee for inspection and copying (34 C.F.R. § 32.3(g)). Lastly, the regulations require that the debtor be informed of the right to request a pre-offset hearing concerning the existence (validity) of the overpayment, the amount of the overpayment, or to seek relief from an involuntarily imposed repayment schedule (34 C.F.R. § 32.3(h)).

The Department policy, which is mostly consistent with the requirements of the applicable statutes and Department regulations, provides further instruction as to how the Department will process salary overpayments and imposes additional requirements upon the Department. One such requirement is that the notice of any debt be served by certified mail, although this requirement is rarely followed by the Department.[11]

[10] The Attorney General and Secretary of Treasury published a notice of proposed rulemaking on December 31, 1997 (62 FR 68476-01) and the final rule was published on November 22, 2000 (65 FR 70390-01). The regulations for Federal Claims Collection Standards (FCCS) are found at 31 C.F.R. Parts 900-904. The final rule revised the FCCS issued by the Department of Justice and the General Accounting Office on March 9, 1994 and reflected changes under the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

[11] Current Department policy and practice shows the Department generally relies on its payroll agent, the

B. Requirement for a Hearing

The statute authorizing installment deduction for indebtedness to the United States resulting from an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances requires an opportunity for a hearing. The individual must be given the opportunity to 1) challenge that a debt exists, 2) challenge the amount of the debt, and 3) in the case of an individual whose repayment schedule is established other than by a written agreement, to establish extreme financial hardship to be relieved of involuntary collection of 15% of disposable income (5 U.S.C. §5514(a)(2)(D)). The Department regulations are consistent with the authorizing statute (34 C.F.R. §§ 32.4(a) and 32.3(e)).

The authorizing statute demands that the hearing be conducted by an individual who is not under the supervision or control of the head of the agency and does not prohibit the appointment of an administrative law judge as the hearing official (5 U.S.C. §5514(a)(2)(D)).[12] The Department's regulations require that the hearing be conducted by a hearing official who is not an employee of the Department or under the supervision or control of the Secretary (34 C.F.R. 32.5(d)). In 2005, with the implementation of the Handbook, the Department established policy interpreting this regulation and authorized an administrative law judge employed by the Department to preside over pre-offset hearings. This policy interpretation of the Department's regulation is consistent with the intent of the initiating statute.

The authorizing statute's provision for a hearing on the existence or amount of the debt requires that the agency provide government records to establish the agency's claim for the debt (5 U.S.C. § 5514(a)(2)(B)). The Department's regulation requires that a copy of the government records on which the determination of overpayment was made must be included with the pre-offset notice and if not, the employee must be informed how those records will be made available to the employee (34 C.F.R. §32.3(g)). The agency carries the initial burden of proof to establish the existence of and amount of the alleged debt.

The Department's regulations require the hearing official to decide whether the Secretary's determination of the existence or amount of the debt is clearly erroneous (34 C.F.R. § 32.9). The Department's policy describes the "clearly erroneous" standard by referencing a standard of review that governs appellate review of district court findings.[13] Neither the Department's regulations nor policy provide any rationale or explanation for requiring this standard of review in an administrative proceeding, which generally allows for a *de novo* review.

Department of Interior (DOI), Interior Business Center to issue the required notice, when the alleged debtor is a current employee of the Department. Often this notice is in the form of a "Bill for Collection" (as titled by the payroll agent in most notices), "Bill of Collection" (as titled in the Department's policy), or otherwise referenced as a debt letter. In instances when the alleged debtor is not a current employee of the Department, the DOI transfers the debt to the Department for issuance of the required notice.

[12] This statute does not prevent a Federal agency from appointing an administrative law judge employed by that Federal agency from presiding over pre-offset hearings for an employee at that Federal agency (*See,* 7 C.F.R. § 1951.111(b)(5) (defining the Hearing Officer for cases involving USDA employees as an Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA)).

[13] The Handbook relies on the "clearly erroneous" standard as described in *Anderson v. Bessemer,* 470 U.S. 564, 73-4 (1985).

C. Involuntary Collection and Extreme Financial Hardship

The authorizing statutes allow the agency to involuntarily collect on an established debt by installment deduction and administrative offset from the current pay, including basic pay, special pay, incentive pay, retired pay, retainer pay, or other authorized pay (5 U.S.C. § 5514 and 31 U.S.C. §§ 3711 and 3716). Pursuant to the statute, unless otherwise agreed to, the agency must limit collection to 15% of disposable pay (5 U.S.C. § 5514 (a)(1)). The authorizing statute allows a challenge to terms of an involuntary repayment schedule upon a showing of extreme financial hardship (5 U.S.C § 5514(a)(2)(D)).

The Department's regulations are consistent with the authorizing statute (34 C.F.R. §§ 32.2 and 32.3(e)). The regulations require a showing of extreme financial hardship to obtain relief from an involuntarily imposed repayment schedule (34 C.F.R. §§ 32.4(c) and 32.5(a)(2)). The regulation requiring a showing of extreme financial hardship was found to be consistent with the authorizing statute (*See, Sibley v. United States Department of Education,* 913 F. Supp. 1181 (N.D. Illinois (1995)). The Department's policy as described in the Handbook is generally consistent with the authorizing statute and the Department's regulations.

D. Time and Attendance

The head of each Executive agency is required to establish a basic administrative workweek of 40 hours for each full-time employee (5 U.S.C. § 6101(a)(2)(A)). Each agency may establish and allow the use of flexible schedules (5 U.S.C. § 6122(a)). Employees accrue annual leave for each full biweekly pay period based on years of service (5 U.S.C. § 6303). Employees accrue sick leave in the amount of one-half day for each full biweekly pay period (5 U.S.C. § 6307). Regulations of the Office of Personnel Management closely track these statutes (*See,* 5 C.F.R. §§ 610.111, 610.121, 630.101, 630.202, 630.301, and 630.401). The Department of Education's policy is found at HCP 630-1.

In January 2003, the Government Accountability Office issued a report *Maintaining Effective Control over Employee Time and Attendance Reporting,* which updated its guidance for internal control for the Federal government addressing employee time and attendance reporting.[14] While the guidance identifies some of the applicable legal and other requirements, each agency's management retains the responsibility to identify all such requirements that apply to their time and attendance reporting systems. The Department uses WebTA to electronically record and track time and attendance.

The United States Department of Interior (DOI), Interior Business Center (IBC) is the Department's payroll processor/agent.[15] The Department has prepared quick reference guides for employees, supervisors, and timekeepers.[16] An employee is responsible for entering work and

[14] This report was issued prior to the 2004 change in name from the General Accounting Office. GAO-01-186G, Dec 1, 2000, https://www.gao.gov/products/GAO-01-186G (last visited May 4, 2020).
[15] The DOI publishes a Time and Attendance Guide, Version 1.1, December 2011, which may be found at: https://www.doi.gov/sites/doi.gov/files/migrated/pmb/owf/upload/Time-and-Attendance-Guide-2011.pdf (last visited May 18, 2020).
[16] https://connected.ed.gov/Documents/webta-qrg-employee.pdf, https://connected.ed.gov/Documents/webta-qrg-

leave time, requesting leave, and validating the timesheet for each pay period. Generally, a timekeeper is responsible for making sure timesheets are processed each pay period and ensuring that leave requests are submitted and approved. A timekeeper may complete and validate a timesheet for an employee and may submit a leave slip for an employee. The timekeeper is responsible for creating a corrected timesheet for an employee. Generally, a supervisor is responsible for certifying a time sheet, making sure leave and absences are properly charged, approving or denying leave requests, and decertifying or rejecting a timesheet.

E. Family Medical Leave Act of 1993

The Family Medical Leave Act of 1993 is a Federal law requiring covered employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons (*See,* PL 103-3, Section 103, February 5, 1993, 29 U.S.C. Chapter 28). Qualified medical and family reasons include personal or family illness, family military leave, adoption, or the foster care placement of a child (PL 103-3, Section 102(a)(1)(A)-(D), 29 U.S.C. §2612(a)(1)(A)-(D)). An employer may require that a claim for leave under the FMLA be supported by certification issued by the healthcare provider. The regulation specifies the certification shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition and the appropriate medical facts within the knowledge of the health care provider. If the leave is for personal illness of the employee, the certification must include a statement the employee is unable to perform the functions of the employee's position (PL 103-3, Section 103(b)(1)-(3) and (4)(B), 29 U.S.C. §2613(b)(1)-(3) and (4)(B)). The FMLA requires that a healthcare certificate shall be submitted to the employer in a timely manner (Pl 103-3, Section 103(a), 29 U.S.C. §2613(a)).

The regulations implementing the FMLA provide a standard approach to offering family and medical leave to Federal employees and describe with more specificity the requirements for evaluating and processing requests for family medical leave (5 C.F.R. §630.1201). Federal employees are provided with twelve administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs (*Id.*). Under the regulations, Federal employees are entitled to leave for a serious health condition of the employee that prohibits the employee from being able to perform one or more of the essential functions of his or her position (5 C.F.R. §630.1203). The employee must invoke entitlement by providing proper notice of intended leave and medical certification meeting the specific requirements (*Id.*).

Family medical leave is unpaid unless the Federal employee specifically elects to substitute accrued annual or sick leave, advanced annual or sick leave or leave available through the voluntary leave transfer program (5 C.F.R. §630.1206). The employee must notify the employer that they have elected to substitute paid leave for unpaid leave prior to the commencement of the leave (*Id.*). Retroactive substitution of paid leave for leave without pay is specifically prohibited (*Id.*). The agency may not deny an employee's right to substitute paid leave or require an employee to substitute paid leave (*Id.*).

The regulations regarding medical certification follow and supplement the statutory language of the FMLA (*See,* 5 C.F.R. § 630.1208). The implementing regulations for the FMLA specifically

employee.pdf , and https://connected.ed.gov/Documents/webta-qrg-timekeeper.pdf (last visited May 4, 2020).

provide that, pending final written medical certification, provisional leave shall be granted if the medical certification is not provided before beginning the leave (5 C.F.R. §630.1208(g)). The regulations specify that the written medical certification must be provided to the employer no later than 15 calendar days after the agency requests such medical certification and if the employee fails to provide the requested medical certification, the agency may charge AWOL or allow the employee to request that the provisional leave be charged as LWOP or charged to annual or sick leave (5 C.F.R. §630.1208(h) and (i)). The regulations specifically provide that an employee is not entitled to family and medical leave if they do not comply with required notifications and do not provide medical certification, that meets the requirements of 5 C.F.R. §630.1208(b) (5 C.F.R. §630.1210(l)).

F. Voluntary Leave Transfer Program

Each Federal agency is required to administer a Voluntary Leave Transfer Program (VLTP). The VLTP allows a covered Federal employee to donate annual leave directly to another employee who has a personal or family medical emergency and who has exhausted all available paid leave (5 U.S.C.§§ 6331 – 6340). The administration of a VLTP is regulated and requires a leave recipient to apply for participation and be approved for participation. It also provides specifies related to the transfer of annual leave, the accrual and use of annual and sick leave, and how transferred annual leave is used (5 C.F.R. §§ 630.901-603.913). The regulations allow transfer of leave to be retroactively substituted for a period of LWOP or used to liquidate an indebtedness for advanced annual or sick leave under certain circumstances (5 C.F.R. § 630.906(e)). The recipient employee is required to use any accrued annual or sick leave prior to using transferred annual leave (5 C.F.R. § 630.909(b)). With some exception, an employee who is in shared leave status accrues annual and sick leave in the same manner as employee in paid leave status (5 C.F.R. § 630.907(a)). The Department policy related to VLTP follows the statute and regulations (HCP 630-10).

That policy requires the Department to keep records of the total amount of annual leave transferred to each leave recipient's annual leave account and the total amount of transferred annual leave used by each leave recipient. It also allows, consistent with the implementing statute and regulations, that transferred leave received during the specified eligibility period plus a 120-day period after participation ends, may be retroactively substituted by the leave recipient for periods of leave without pay or used to liquidate an indebtedness for advanced annual or sick leave.

IV. Analysis

A. Respondent's Initial Request

In the request for a hearing, the Respondent indicated she was on medical leave during pay periods 6 through 12 of 2018 (February 18, 2018-May 26, 2018). The Respondent explained access to WebTA during this period was unavailable to report time and attendance, and therefore these timesheets were prepared and submitted by a timekeeper and her supervisor. The Respondent indicates a bill for a debt created due to an administrative error was issued and despite contacts to her supervisor, the Department's debt coordinator, and an employee at the

DOI she could not understand how the debt was determined. She asserts she was eligible for family medical leave through June 13, 2018 but she was unreasonably denied leave and charged with absence without leave (AWOL). The Respondent further explained that when her request for a reasonable accommodation was denied, she was ordered to report to duty even though she had not been medically cleared to return to work. The Respondent asserts when her requests for leave without pay (LWOP) were denied, she was forced to separate from service.[17] The Respondent asserts she has not been given a full opportunity to review her leave history/usage or the timesheets submitted on her behalf. She contends a full review would show the alleged debt is not supported.

B. Department's Argument

The Department contends that the Respondent was on extended emergency medical leave through FMLA, from January 7, 2018 (which was the start of pay period 3 of 2018) until May 1, 2018 (which was in pay period 11 of 2018). The Department contends the Respondent applied for participation in the VLTP in January but was not approved until April 4, 2018 (which was in pay period 11 of 2018). The Department explains a "problem arose when the payroll processing technician discovered that" the Office of Management "payroll coordinator could not go back and input leave share hours during the period the Respondent was on leave under FMLA." Instead corrections had to be made for pay periods 6 of 2018 through 8 of 2018. The Department explains this was further complicated because donated leave under the "VLTP could not be utilized until the employee had exhausted all of her" annual and sick leave. To make these adjustments, which had been input (and paid) on behalf of the Respondent, the timesheets had to be decertified and re-input into the payroll Federal Personnel and Payroll System (FPPS). The Department asserts the debts for pay periods 6 through 10 of 2018 resulted from the corrections to these timesheets changing the Respondent's leave from annual and sick leave in lieu of family medical leave to the leave transferred from the VLTP. The Department asserts the debt in pay period 12 of 2018 resulted from health benefits paid by the Department on behalf of the Respondent in the amount of $171.84. Although the Department contends these debts are valid and the Department is entitled to collect these debts, the Department's evidence, and arguments, as discussed in this decision, fail to support the Department's contention.

C. Respondent's Response to the Department's Argument

In the Respondent's response, she asserts she is an individual with a disability under the American's with Disability Act who was forced to resign after being ordered to physically report to her official duty station prior to obtaining medical clearance from her treating medical professionals. She contends that in response to the order she resigned under duress and when she attempted to withdraw her resignation, her request was denied. She asserts numerous circumstances of financial hardship based on what she believed to be a forced resignation. She contends the debt amount calculated is in error and did not accurately account for accrued leave. She asserts her attempts to communicate with her immediate supervisor were unanswered and she was never provided with rights or leave options under any of the programs such as FMLA,

[17] The record establishes the Respondent requested to revoke her resignation within days of submitted it, but that request was denied without reason by the Department's Chief Human Capital Officer (OES Document 31, p. 8-9. The Respondent filed this evidence in duplicate at OES Document 32).

VLTP, or the availability of advanced annual or sick leave. She states she last worked on approximately February 28, 2019 and she was never provided any copies of the time and attendance timesheets that were prepared and submitted on her behalf.

D. Analysis of Facts in Evidence

The Department bears the burden to establish the alleged debts are valid. Upon issuance of the initial and subsequent orders governing this proceeding, the Department was directed to provide all government records supporting the alleged overpayment, a duty also imposed by the Department's own regulations, wherein the Department is to provide all supporting government records with the notice or advise how copies of those records are to be made available to the debtor.[18] In this proceeding the Department submitted some official time and attendance records from WebTA, many email communications between Department employees, email communications between the Department and DOI employees, and full copies of the notices issued by the Department's Debt Coordinator within the Office of Management (OM).[19] The Department failed to provide copies of relevant leave and earnings statements for any of the pay periods at issue in this appeal,[20] failed to provide records of leave accruals and usage during the relevant pay periods, and failed to provide any evidence of payments the Department made for the Respondent's share of her health insurance benefit. Furthermore, the Department failed to provide any records showing the amount of annual leave transferred to the Respondent, as a participant in the VLTP, and how that transferred annual leave was used by the Respondent.[21]

The Respondent entered an extended period of leave beginning in pay period 6 of 2018. The Respondent last accessed WebTA on March 2, 2020, supporting her assertion that while on extended leave, she did not have access to WebTA and time and attendance records were prepared on her behalf (OES Document 20, p. 8). At all times thereafter, timesheet entries were made on her behalf by a designated timekeeper and, consistent with the delegated responsibilities, corrected timesheets were prepared by a designated timekeeper.

On March 5, 2018, the date timesheets for pay period 6 (February 18, 2018 to March 3, 2018) were required to be certified, the Respondent's first line supervisor commenced email communications with a designated timekeeper and indicated adjustments needed to be made. Specifically, the supervisor indicated that the respondent's time records for February 22, 2018 needed to reflect "SFL SL" was used for three hours and "AFS" was used for six hours and March 1, 2018 should be recorded as nine hours "AFS" (OES Document 22, p. 5). "SFS" is the designation that indicates paid sick leave in lieu of Family (Medical Self) and AFS is the designation that indicates paid annual leave in lieu of Family (Medical Self). This time record, in

[18] This failure, along with other failures identified in this decision, renders the notices issued by the Department deficient.
[19] The organizational structure of the Department was changed in about January 2018, the former Office of Management was merged into the new principal office, Office of Finance and Operations (OFO).
[20] The Respondent provided reissued copies of her leave and earnings statements for pay period 5 through 9 of 2018 with her initial request.
[21] The only evidence the Department has provided in relation to transferred leave is included in a single email from a designated timekeeper to the Respondent's supervisor on May 21, 2018. That email indicates the FMLA corrections were done to change FMLA to LS1 but the Respondent still has not been paid and we don't even know if she has enough donated leave to cover these corrections (OES Document 27, p. 24).

the original form, shows the Respondent's time and attendance was recorded as the supervisor instructed in her email and that the Respondent was paid for hours worked on February 27 and 28, 2018. (OES Document 20, p. 7). The work hours on February 27 and 28, 2018 are consistent with the Respondent's assertion made in her response to the Department's brief (OES Document 28).[22] The evidence shows the originally submitted timesheet was processed and the Respondent was paid for 80 hours in pay period 6 (OES Document 1, p. 6).

Beginning on March 16, 2018 and extending until March 19, 2018, the supervisor, using email to communicate, again alerted a designated timekeeper that the Respondent is on extended leave and unable to submit leave requests via WebTA (OES Document 22, p. 10). These communications instruct a designated timekeeper that the Respondent requests that she exhaust all her available accrued annual leave (35.30 hours)[23] in lieu of Family (Medical Self), and then use LWOP in lieu of Family (Medical Self) for any remaining hours for pay period 7 of 2018 (March 4 to 17, 2018) (*Id.*). The timesheet that was originally validated by a designated timekeeper, certified by the supervisor, and automatically processed by the system, did not follow that instruction. Instead of using the code "AFS" for 35.30 and "10S" (the code for leave without pay in lieu of Family (Medical Self)) for 44:30, the pay period was processed for 80 hours of annual leave in lieu of Family (Medical Self). The evidence shows the Respondent was paid for 80 hours in pay period 7 (OES Document 1, p. 7).

Also, on March 19, 2018, the supervisor communicated by email to a designated timekeeper that annual leave requests for pay period 8 of 2018 that were requested on behalf of the Respondent and approved by the supervisor needed to be cancelled (OES Document 22, p. 7). The timesheet for pay period 8 (March 18 to 31, 2018), originally prepared and validated by a designated timekeeper and certified by the supervisor, reflected a combination of regular time worked (in the office and by telework at home), LWOP in lieu of Family (Medical Self), annual leave in lieu of Family (Medical Self), and sick leave in lieu of Family (Medical Self) (OES Document 20, pp. 11-12). Consistent with this processed timesheet, the earning and leave statement for this pay period shows the Respondent was paid for 46 hours and used 34 hours of leave without pay (OES Document 1, p. 8).

On April 4, 2018, the Respondent and supervisor were notified that the Respondent was an approved recipient in the VLTP (OES Document 23). The approval period began January 7, 2018 and was scheduled to end on May 1, 2018, unless extended upon updated medical documentation and supervisory approval. Based on this approval, the Respondent was eligible to receive donations from other employees that could have been used to cover any unpaid absences caused by the emergency described in the Respondent's application. Since transferred leave may be retroactively substituted by the leave recipient for periods of leave without pay or used to liquidate an indebtedness for advanced annual or sick leave, the failure of the Department to provide this evidence contributes to the Department's failure to establish that the alleged debt calculation is valid.

[22] The Respondent electronically filed her reply in triplicate; therefore, the record includes the same document at OES Documents 28, 29, and 30).

[23] The format "hours.minutes" is used to indicate time worked, time accrued, and time used, therefore, 35.30 indicates 35 hours and 30 minutes.

On April 16, 2018, the supervisor was notified the Respondent's timesheet for pay period 9 of 2018 (April 1 to 14, 2018) was uncertified (OES Document 22, pp. 12-13). In response to that notification, the supervisor informed a designated timekeeper that the Respondent elected LWOP in lieu of Family (Medical Self) for 80 hours but was also approved for VLTP (*Id.* p. 12). The supervisor indicted certification could not proceed until she was informed of the proper leave category (*Id.*). Thereafter a designated timekeeper informed the supervisor that leave requests were prepared and submitted for approval (*Id.* pp. 11-12). The timesheet for pay period 9 (April 1 to 14, 2018), that was originally prepared, validated, and certified by a designated timekeeper was processed on April 17, 2018 with 80 hours attributed to the code "LS1", reflecting Leave Share (Medical Self) Used 1st Emergency (OES Document 20, pp. 19-20). The leave and earnings statement for pay period 9 shows the Respondent received no pay for this pay period (OES Document 1, p. 9).

The record does not include any substantive email communications related to pay period 10 (April 15 to 28, 2018), except for one reference by the supervisor of accidently decertifying the timesheet for this pay period (OES Document 27, p. 5) and does not include a leave and earnings statement for that pay period. There is evidence that a timesheet for pay period 10 was validated by a designated timekeeper and certified by the Respondent's supervisor (OES Document 20, pp. 21-22). That timesheet was processed on April 30, 2018, with 80 hours attributed to code "LS1" – the code for Leave Share (Medical Self) Used 1st Emergency (*Id.*).

The record includes email communication evidence related to pay period 12 of 2018 (May 13 to May 26, 2018). On May 15, 2018, the supervisor informed a designated timekeeper that the Respondent would not exhaust leave under the Family Medical Leave Act until pay period 12 (OES Document 27, pp.3) On May 25, 2018 and May 29, 2018, the supervisor informed a designated timekeeper that the Respondent's time and attendance, as well as accompanying leave requests, need to reflect 8:00 hours with code "LS1" - Leave Share (Medical Self) Used 1st Emergency for each workday May 14 through 16, 2018 and for 2:30 hours on May 17, 2018 (OES Document 27, pp. 31-33). The remainder of the time for this pay period, 53:30 hours, was to be processed as absent without leave (AWOL) (*Id.*). The record does not include a leave and earnings statement for this pay period and does not include any documentation from WebTA that confirms the directives in these email communications were input or processed in WebTA.

On April 18, 2018, a payroll technician with the DOI, initiated an email communication to multiple individuals at the Department (OES Document 24). The individuals included the Acting Chief Human Capital Officer, an employee in the front office of OFO, the designated timekeeper for the Respondent, and fourth Department employee (*Id.*). The payroll technician notified the Department there was a "FATAL Error" on the Respondent's timesheet for pay period 9 of 2018 (April 1 to 14, 2018). The error related to the use of a leave share pay code that was inconsistent with the current share type. The technician advised that an amended timesheet was needed. There are additional email communications in the record which suggest the problem was resolved, but the Department provided no further explanation of how the fatal error was resolved (OES Document 24). This record includes the time and attendance summary from WebTA for pay period 9 of 2018 that was originally prepared, validated, and certified by a designated timekeeper and was processed on April 17, 2018 (OES Document 20, p. 19-20). The Respondent filed evidence of the leave and earnings statement for this pay period that shows she was not paid for any hours in this pay period (OES Document 1, pp. 9).

On May 3, 2018, that same payroll technician sent an email to the Respondent's designated timekeeper indicating items "ran through calc" that require discussion and amended timesheets for the Respondent for pay periods 6 through 8 of 2018 (OES Document 25). Between May 14 and May 16, 2018, there were multiple emails exchanged between the Respondent's supervisor, the Respondent's designated timekeeper, and the DOI payroll technician who requested amended timesheets (OES Documents 26 and 27). On May 16, 2018, corrected timesheets were validated by a designated timekeeper and certified by the Respondent's supervisor. Each corrected timesheet reflected 80 hours attributed to code "LS1", reflecting Leave Share (Medical Self) Used 1st Emergency (OES Document 20, pp. 9-10, 13-14, and 17-18). In its brief, the Department provided no explanation as to why the corrected timesheets used the code of "LS1" for dates prior to the Respondent's approval to participate in the VLTP. Notably, with these corrections, this code was used for time prior to the Respondent's exhaustion of her own accrued annual and sick leave, but again, the Department failed to provide any explanation or argument for the amendments made.

On May 17, 2018, the DOI payroll technician communicated by email to the Respondent's designated timekeeper that amended timesheets and conversions for each of these pay periods were completed (OES Document 27, pp. 20-23). In relation to pay periods 6 and 7 of 2018, the payroll technician indicated the employee was originally paid for 80 hours and everything is converting to paying hours (*Id.*). In relation to pay period 8 of 2018, the payroll technician indicated the Respondent was originally paid for 46 hours but after the conversion is only going to be eligible to be paid for 24 hours (*Id.*).

E. General Analysis of the Notices

There is no proof that any of the notices issued by the debt management coordinator in the Department Office of Management, Human Resources Services were sent by certified mail, return receipt as required by the Department's policy, found in the Department's Handbook. Each of the notices advise the Respondent she may "apply for a waiver of repayment of this bill" if she had "no reason to recognize this as an erroneous payment, and that collection would be against equity and good conscience." None of the notices provide any information as to the right to request a pre-offset hearing to review the existence or amount of the overpayments consistent with 34 C.F.R. § 32.3(h). Each of these notices provide a short explanation of why the debt was identified and that billing would be initiated through a third party service provider, Centralized Receivables Service, but the notices provide no information of how interest and administrative costs will be charged, that the Respondent has a right to enter into a written repayment agreement, or that the Department has the right to involuntarily collect debts in the absence of repayment or a written agreement for repayment, as is required by 34 C.F.R. § 32.2(b), (c), (e), and (f). The notices fail to include copies of the government records on which the overpayment determinations were made, and it does not provide information on how the records would be made available for inspection and copying, as is required by 34 C.F.R. § 32.2(g). The additional requirements identified in subparagraphs (i), (j), and (k) of 34 C.F.R. § 32.2 were also absent from these notices. The Department's failure to provide proper notice does not negate the validity of the claim of these debts, but it does suspend the time-limit to request a pre-offset hearing. Once a pre-offset hearing is requested, a full, fair, and impartial hearing on the

establishment of the alleged debts is required.

F. Analysis of Debt ID [redacted 3], a debt alleged in the amount of $407.70 (Notice at OES Document 21)

An August 14, 2018 notice indicated a debt in the amount of $407.70 was determined when there was a leave share adjustment for pay period 7 of 2018. The notice includes an undated attachment identified as "Transferred Bill Information." The attachment indicated a debt resulted when a leave share adjustment was processed in pay period 11 of 2018. The adjustment showed 14.30 hours of annual leave in lieu of family medical leave, which was initially processed in pay period 7 of 2018, was replaced with 14.30 hours of leave without pay in lieu of family medical used. The transferred bill information indicated this change from a paid leave status to a nonpaid leave status resulted in a gross pay adjustment of $472.70, which is determined by multiplying the Respondent's hourly rate of pay by 14 hours and 30 minutes. The net amount to be paid by the employee (Respondent) was identified as $407.70 after the Department recovered payments in the amount of $65.00 from Medicare ($6.86), OASDI ($29.31), Retirement ($14.65), and TSP ($14.18). The Department provided no evidence that a timesheet correction for pay period 7 of 2018 was processed in pay period 11 of 2018 and the Department failed to explain why it asserts a debt was incurred when the Department failed to show an adjustment was processed in pay period 11 of 2018.

Instead, the evidence provided by the Department shows a time adjustment for 14.30 hours in pay period 7 of 2018 was processed in pay period 12 of 2018 and included in the Debt ID 81561616027. The Department has failed to explain why it asserts a debt was incurred after an adjustment was processed in both pay periods 11 and 12. As such, I find this is a duplicate determination and the debt alleged under Debt ID [redacted 3] is unsupported.

The debt identified as related to an adjustment to pay period 7, as processed in pay period 12 will be discussed and evaluated in the context of Debt ID [redacted 2], which alleges a debt in the amount of $1,402.66.

G. Analysis of Debt ID [redacted 2], a debt alleged in the amount of $1,402.66 (Notice at OES Document 20)

The evidence shows the Respondent's timesheets for pay periods 6, 7, 8, and 10 were initially processed on or before the Tuesday following the end of each pay period (OES Document 20, pp. 8, 12, 16, and 22). The evidence shows the Respondent was paid at her regular hourly rate for 80 hours in pay periods 6 and 7 consistent with the respective timesheets initially processed (OES Document 1, pp. 6-7). On May 17, 2018 (during pay period 12 of 2018), corrections were processed for pay periods 6 and 7 (OES Document 20, pp. 12 and 14). In both pay periods the corrections changed all initial pay codes of SFS (Sick in Lieu of Family (Medical Self) Used) and AFS (Annual in Lieu of Family (Medical Self) Used) to LS1 (Leave Share (Medical Self) Used 1st Emergency).

In an email on that same date, the DOI payroll technician notified the Respondent's timekeeper that she entered the amended timesheet for pay period 6 of 2018 and after the conversions

"everything is converting to paying hours" (OES Document 27, p. 21). The DOI technician explained further that the employee (Respondent) was originally paid for 80 hours (OES Document 27, p. 21). The pay code adjustments in the undated Transferred Bill Information as related to pay period 6 of 2018 are consistent with the information in the email and the Respondent incurred no debt for pay period 6 of 2018.

In that same email on May 17, 2018, the DOI payroll technician indicated the timesheet amendments and conversions for pay period 7 of 2018 converted to paying hours and the employee (Respondent) was originally paid for 80 hours (OES Document 27, pp. 21-22). The pay code adjustments identified in the Transferred Bill Information included in the attachment to this notice and the notice for Debt ID [redacted 3] are consistent with the information in the email that confirms the Respondent incurred no debt for pay period 7 of 2018.

In a separate email on May 17, 2018, the DOI payroll technician indicated conversions based on the corrected timesheet for pay period 8 of 2018 were processed (OES Document 27, p. 20). The original timesheet for pay period 8 of 2018 was prepared by a designated timekeeper on March 19, 2018, verified by an alternate designated timekeeper on April 2, 2018, certified by the Respondent's supervisor and processed on April 3, 2018. That original timesheet showed the Respondent was paid for 36.30 hours of work and 9.30 hours of paid annual and sick leave in lieu of Family (Medical Self) Used, for a total of 46 hours. To complete the 80-hour standard work requirement, the Respondent was charged with 34 hours of leave without pay. On May 17, 2018 (during pay period 12 of 2018), a correction was processed for pay period 8 of 2018 and 80 hours of Leave Share (Medical Self) Used 1st Emergency (LS1) were substituted for all prior entries on this timesheet (OES Document 20, pp. 17-18). On that same date, the DOI payroll technician processed conversions for pay period 8 of 2018 (OES Document 27, p. 20). The payroll technician communicated that the employee/Respondent was originally paid for 46 hours and this is corroborated by a leave and earnings statement for pay period 8 of 2018 showing the Respondent was paid her regular rate of pay for 46 hours (OES Document 1, pp. 8). Upon completion of the conversion, the payroll technician reported the Respondent is entitled to only 24 paid hours (OES Document 27, p. 20). The Transferred Bill Information affiliated with this debt includes nine pay code adjustments for pay period 8. The Department brief does not explain how those entries are reconciled with the information in the May 17, 2018 email from the DOI payroll technician. Despite the Department's failure to provide any explanation of how the pay code adjustments relate to the establishment a debt, the information in the email and the other evidence established the Respondent incurred an overpayment for 22 hours in pay period 8 of 2018.

A review of the evidence related to pay period 10 of 2018 shows a timesheet for this pay period was saved by the system on April 27, 2018, validated by a designated timekeeper and certified by the Respondent's supervisor on April 30, 2018. This timesheet was then processed on April 30, 2018 (OES Document 20, pp. 21-22). The Respondent's time and attendance was entered as 80 hours of Leave Share (Medical Self) Used 1st Emergency (LS1). The evidence does not indicate if an amendment to the timesheet for pay period 10 of 2018 was necessary or processed. The record does not include any evidence that the Department processed a corrected timesheet for pay period 10 of 2018. The Department failed to provide any evidence that the DOI payroll technician processed a conversion for pay period 10 of 2018 that established a debt for this pay

period. The Department failed to provide any evidence that the Respondent was paid for any hours in pay period 10 of 2018. The Transferred Bill Information affiliated with this debt includes five line-item adjustments for this pay period (OES Document 20, p. 5). In its brief, despite the Department's failure to provide government records that the Respondent was paid for hours worked or was paid for time not worked in pay period 10 of 2018, the Department concludes that an overpayment must have occurred in this pay period, because the DOI transferred a bill to the Department, which was then attached to this notice.

The total gross pay adjustment for Debt ID [redacted 2], as calculated in the Transferred Bill Information, is $1,548.50. This equates to an overpayment for 47.30 hours, based on the Respondent's rate of pay ($32.60 per hour).[24] After processing the original and corrected timesheets for pay periods 6, 7, and 8 of 2018 and after the conversions by DOI over these pay periods, the evidence shows there was no overpayment in pay periods 6 and 7 of 2018. The evidence shows after a corrected timesheet for pay period 8 of 2018 was processed and converted, there was an overpayment for 22 hours in pay period 8 of 2018, i.e. a gross overpayment of $717.20.

While one may deduce that the gross pay adjustment in pay period 10 of 2018 was based on an overpayment of 25.30 hours, such a deduction is insufficient to establish a valid debt incurred in pay period 10 of 2018. The Department bears the burden to show any alleged debt is valid and supported by the appropriate government records. The Department cannot rely on the Transferred Bill Information and argue that if a bill was transferred, it must be a valid debt. That argument is contrary to the published policy of the Department. The Department policy requires that the Department's human resources office investigate all debts upon receipt of a Bill of Collection generated by the DOI.[25] The Department's investigation requires that the Department identify all evidence that supports the amount of the debt and any other information which supports or disproves the basis for the debt. By simply relying on the information in the Transferred Bill, the Department has failed to establish a valid debt incurred in pay period 10 of 2018.

The Transferred Bill Information attached to this notice shows a pay adjustment, either positive or negative, based on every pay code adjustment identified in pay periods 6, 7, 8, and 10 of 2018 that was processed in pay period 12 of 2018. As indicated above this resulted in a total gross pay adjustment of $1,548.50. The amount is reduced by payments the Department was able to recover from other sources. The Transferred Bill Information shows the Department was able to recover $317.88 for payments to Federal withholding ($18.68), State withholding ($64.69), Medicare ($22.45), OASDI ($96.01), Retirement ($48.01), TSP ($46.46), FEGLI – Regular ($10.65), FEGLI – Additional ($8.28), FEGLI – Optional ($0.40), and FEGLI – Family ($2.05). After these deductions were made, the Transferred Bill Information shows the net balance after recoveries was increased by $171.84, which is an amount equivalent to the Respondent's share of her health insurance benefit, and the net amount alleged to be owed by the Respondent is

[24] The Department performs a calculation in its brief suggesting the Respondent's hourly rate of pay was $33.05, but this information is contrary to the evidence of the Respondent's hourly rate of pay identified in the leave and earnings statements for pay periods 5, 6, 7, and 8 (OES Document 1, pp. 5-8).
[25] The Transferred Bill Information is the same information that would be generated in a Bill of Collection, but it was transferred back to the Department since the Respondent separated from the Department on June 7, 2018.

$1,402.66.

The Department's brief is silent as to which pay period the Department asserts it paid the Respondent's share of her health insurance benefit. Instead, the Department argues this alleged overpayment resulted from changes in the Respondent's status from paid leave under FMLA to transferred leave under the VLTP for pay periods 6 through 10 of 2018. The Department failed to provide any evidence that it paid the Respondent's share of her health insurance benefit during any period of alleged overpayment. Therefore, the addition of $171.84, as a debt owed by the Respondent, is not established as a valid debt.

H. Analysis of Debt ID [redacted 1], a debt alleged in the amount of $171.84

The Department contends that a debt in the amount of $171.84 was incurred when the Department paid the health benefits of the Respondent in pay period 12 of 2018. The Department, in its brief, argued this was the result following corrections to the Respondent's time and attendance sheets for pay periods 6 through 10 of 2018 and makes no mention of pay period 12 of 2018. The Department provided no evidence to support this contention. Specifically, the Department failed to provide the leave and earnings statement for pay period 12 of 2018 and failed to provide any evidence the Department paid the Respondent's share of the Respondent's health benefits in pay period 12 of 2018. Review of leave and earnings statements from pay periods 5, 6, 7, and 8 show the Respondent's pay was reduced by her share of the health insurance benefit, $171.84 per pay period, and the Department paid its share of the Respondent's health insurance benefit, $491.00 in each of those pay periods. Instead of providing any evidence the Department paid the Respondent's share of her health insurance benefit in pay period 12, the Department again relies on the August 14, 2018 notice with the attached Transferred Bill Information. As indicated previously in this decision, the Department's reliance on the Transferred Bill Information and arguing if a bill was transferred, it must be a valid debt is contrary to the published policy of the Department. The Department policy requires that the Department's human resources office investigate all debts upon receipt of a Bill of Collection generated by the DOI.[26] The Department's investigation requires that the Department identify all evidence that supports the amount of the debt and any other information which supports or disproves the basis for the debt. The Department's failure to produce any government records other than the notice is a failure to establish the validity of this alleged debt.

I. Analysis of whether the Respondent has established extreme financial hardship

The Respondent asserts she has established extreme financial hardship and therefore needs a reduced payment schedule for any debt that is established as valid. In support of this assertion, the Respondent submitted evidence that she is experiencing financial distress due to her forced resignation, increased expenses to maintain her benefits after her forced resignation, and evidence of an insurance lost that occurred on October 9, 2018 (OES Documents 15, 16, and 17, same document submitted in triplicate). Despite this general evidence of financial stress, she has failed to establish specific evidence that her monthly expenses exceed her ability to meet the cost of necessities or other legal obligations.

[26] The Transferred Bill Information is the same information that would be generated in a Bill of Collection, but it was transferred back to the Department since the Respondent separated from the Department on June 7, 2018.

VI. Findings of Fact

1. Between February 18, 2018 and May 26, 2018, covering pay periods 6 of 2018 through 12 of 2018, the Respondent was a [redacted].
2. The Respondent separated from Federal Service on June 7, 2018, upon receipt of a directive from her supervisor that she must "report to work in person" on June 8, 2018,[27] despite the Respondent's assertion she had not yet been cleared by her treating medical professional to return to work.
3. The Respondent's June 11, 2018 request to withdraw her resignation was denied by the Chief Human Capital Officer and her request to be placed on leave without pay until such time as her pending request for a reasonable accommodation was denied by the Respondent's supervisor.
4. On August 14, 2018, the Department issued three notices of overpayment to the Respondent. None of these notices fully comply with the statutory requirements for notices of overpayment. None of these notices fully comply with the Department's own regulatory requirements or policy for notices of overpayment.
5. Despite the deficient notices, the Respondent filed an appeal of these alleged overpayments on August 22, 2018.
6. The Respondent was on extended leave during pay periods 6 through 12 of 2018 (February 18, 2018 to May 26, 2018).
7. During that time, the Respondent communicated her leave requests to her supervisor. The supervisor communicated that information to a designated timekeeper for processing of required leave requests.
8. Consistent with the responsibilities for designated timekeepers, timesheets for pay periods 6 through 10 of 2018 were initially, and timely, prepared and validated by the designated timekeeper or an alternate designated timekeeper. These timesheets were certified by the Respondent's supervisor and subsequently processed.
9. Upon the processing of the timesheet for pay period 6 of 2018, the Respondent was initially paid her hourly rate for 80 hours, which included 8 hours of holiday pay, 9 hours of work at her duty station, 9.30 hours of work by telework, and 53.30 hours of paid leave (annual or sick in lieu of Family (Medical Self)).
10. Upon the processing of the timesheet for pay period 7 of 2018, the Respondent was initially paid her hourly rate for 80 hours paid leave (annual in lieu of Family (Medical Self)).
11. Upon the processing of the timesheet for pay period 8 of 2018, the Respondent was initially paid her hourly rate for 46 hours, including 36.30 hours for paid work (at the duty station and by telework) and 9.30 hours of paid leave. The remaining hours, to complete the required 80-hour pay period, were processed as leave without pay in lieu of Family (Medical Self) Used, code 10S.
12. The Respondent's application for participation in the Voluntary Leave Transfer Program was approved on April 4, 2018 and was initially effective for the period January 7, 2018 through May 1, 2018. Consistent with the program policies, the Respondent was allowed 120 days from May 1, 2018 to liquidate any leave without pay or advance leave deficit incurred resulting from the Respondent's medical emergency.

[27] June 8, 2018 was the last Friday in pay period 13 of 2018.

13. On April 17, 2018, a timesheet for pay period 9 of 2018 (April 1 to 14, 2018) was processed on behalf of the Respondent reflecting 80 hours attributed to pay code "LS1" designating Leave Share (Medical Self) 1st Emergency. A leave and earnings statement shows the Respondent did not receive any pay for pay period 9 of 2018.
14. On April 18, 2018, a payroll technician from the Department of Interior, the Department's payroll agent, notified multiple individuals at the Department that a "FATAL Error" occurred with the processing of the Respondent's timesheet for pay period 9 of 2018.
15. Following receipt of that information, on May 16, 2018, the Respondent's designated timekeeper prepared corrected timesheets for pay periods 6 through 8 of 2018. In the corrected timesheets for pay periods 6 and 7 of 2018, all initial time processed under pay codes for annual or sick in lieu of Family (Medical Self) were corrected to the pay code LS1. In pay period 8 of 2018, the corrected timesheet changed all initial time processed, whether processed as regular time worked, leave without pay, or annual leave in lieu of Family (Medical Self) to LS1.
16. On May 17, 2018, the DOI payroll technician ran conversions for pay periods 6 through 8 of 2018. The conversions for pay periods 6 and 7 resulted in 80-hours of paid time. The conversion for pay period 8 resulted in paid hours for 24 hours and noted the Respondent was originally paid for 46 hours.
17. The evidence and government records provided by the Department fail to establish the debt under Debt ID [redacted 2], a debt alleged in the amount of $171.84, is a valid debt. The Department asserts this debt was incurred in pay period 12 of 2018 when the Department paid the Respondent's share of her health insurance benefit. Other than the information in the Transferred Bill Information form the DOI, the Department failed to provide any evidence this benefit was paid by the Department on behalf of the Respondent.
18. The evidence and government records provided by the Department fail to establish the debt under Debt ID [redacted 3], a debt alleged in the amount of $407.70, is a valid debt. The Department asserts this debt was incurred due to a corrected timesheet for pay period 7 of 2018, that was processed in pay period 11 of 2018, however the Department failed to provide any evidence, other than the Transferred Bill Information from the DOI, that a corrected timesheet for pay period 7 of 2018 was processed in pay period 11 of 2018. Because the Department asserts it recovered $65.00 from Medicare, OASDI, Retirement, and TSP, the Respondent is entitled to a credit for this amount.
19. In relation to the debt asserted under Debt ID [redacted 2], a debt alleged in the amount of $1,402.66, the Department has provided evidence that a portion of that alleged debt is a valid debt. The evidence and government records show that despite corrections and conversions being processed to the timesheets for pay periods 6 and 7 of 2018, no debt was incurred for those pay periods. The evidence and government records show that upon processing of a correction and conversion to the timesheet for pay period 8 of 2018, the Respondent was paid for 22 hours for which the Respondent was not entitled to be paid.
20. Also, in relation to the debt asserted under Debt ID [redacted 2], the Department asserted an overpayment was incurred in pay period 10 of 2018 when the Department processed a corrected timesheet for this pay period in pay period 12 of 2018. Despite this assertion, the Department failed to provide any evidence, other than the Transferred Bill Information from the DOI, that a corrected timesheet for pay period 10 of 2018 was

processed in pay period 12 of 2018. The Department failed to provide any evidence of a leave and earnings statement showing the Respondent received any pay for pay period 10 of 2018. Consequently, the Department has failed to establish a valid debt was incurred during pay period 10 of 2018.

21. Lastly, in relation to the debt asserted under Debt ID [redacted 2], the Department asserts it paid the Respondent's share of her health insurance benefit ($171.84) for one pay period between pay periods 6 and 10 of 2018. Despite this assertion, the Department failed to provide any documentation, except for information in the Transferred Bill from the DOI, that the Department paid the Respondent's share of her health insurance benefit. Because the Department reduced the amount it was able to recovery from other sources, the Respondent is entitled to a credit for this amount.
22. Therefore, in relation to the debt asserted under Debt ID [redacted 2], the evidence and government records support a finding that the total gross pay adjustment established in under this Debt ID is $717.20. Because the Department asserts it recovered payments in the amount of $317.68 from Federal withholding, State withholding, Medicare, OASDI, Retirement, TSP, and FEGLI – regular, additional, optional, and family, the Respondent is entitled to a credit for this amount.
23. After reducing the gross pay adjustment of the established overpayment by the amounts recovered from other sources and the crediting the Respondent for $171.84, in relation to an alleged debt for health insurance benefits that was not established herein, the net owed by the respondent is $162.68.

VII. Conclusion and Order

The Department alleges three overpayments to the Respondent in the amount of $1,982.20. The Department has failed to establish the validity of Debt ID [redacted 3], a debt in the alleged amount of $407.70. The Department has failed to establish the validity of Debt ID [redacted 1], a debt in the alleged amount of $171.84. The Department has established some of the debt alleged in Debt ID [redacted 2] is a valid debt. In establishing the validity of some of this debt, the Department provided government records that establish the Respondent was overpaid for 22 hours in pay period 8 of 2018. Based on the Respondent's hourly rate of pay in pay period 8 of 2018, the total gross pay adjustment for pay period 8 of 2018 was $717.20. The Department asserts it already recovered money from Federal withholding, State withholding, Medicare, OASDI, Retirement, TSP, Health Benefit, and FEGLI – Regular, Additional, Optional, and Family. Based on the recovered amounts from the notices from Debt IDs [redacted 3] and [redacted 2], the Department has already recovered $382.68. Because the established debt in pay period 8 of 2018 is based on the gross pay adjustment, the Respondent is entitled to a credit for these recoverables. Because the Department failed to establish a debt for the Respondent's health insurance benefit that allegedly occurred resulting from corrections to made to pay periods 6 through 10 of 2018, the Respondent is entitled to a credit for $171.84. Consequently, the remaining debt is $162.68.

Based on the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED:**

1. The Respondent shall pay to the U.S. Department of Education, in a manner as

required by law, the sum of $162.68.

2. The Department shall comply with its regulatory requirement and provide the Respondent an opportunity to enter into a written voluntary repayment agreement with the Department. Therefore, on or before the 15th day after receipt of this decision, the Department shall, in writing, inform the Respondent of the name, title, and contact information, to whom the Respondent may submit a repayment agreement for the amount of $162.68.

3. The Respondent shall have fifteen (15) days from receipt of the information from the Department to submit a written voluntary repayment agreement. The Respondent shall indicate how she proposes to repay this debt by indicating how much and at what intervals the Respondent will make repayments. The Respondent's plan shall include at least monthly payments of $25.00 until this debt is paid in full.

4. Upon receipt of a written voluntary repayment agreement from the Respondent, the Department shall immediately notify the Respondent if the proposed repayment agreement is acceptable. The Department shall also include relevant information regarding how payment shall be remitted upon acceptance of the written voluntary repayment agreement.

5. If the Respondent fails to timely submit a signed voluntary payment agreement pursuant to this decision, the Department is authorized to collect the amount of $162.82 by any lawful means until the debt is fully paid.[28]

6. This decision constitutes a final agency decision on the Respondent's request for a pre-offset hearing. The Respondent has timely requested a Waiver in relation to the August 14, 2018 Notices of Overpayment issued by the Department. That matter, Docket Number 18-49-WA, was stayed pending the final decision of this pre-offset hearing. Consistent with his authority, the Waiver Official, will address the continuation of that Waiver Proceeding.

Dated: May 21, 2020

_____
Angela J. Miranda
Administrative Law Judge

[28] Collection under this paragraph is stayed pursuant to the Order Staying Proceedings, dated August 30, 2018, issued under Docket Number 18-49-WA and will remain subject to future orders issued by the assigned Waiver Official until a final decision in 18-49-WA is issued.

SERVICE

Service completed by Office of Hearings and Appeals Electronic Filing System (OES) automatic email notice** sent to the email of record for the following registered e-filers:

[redacted]

Tracey Sasser
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave, S.W.
Room 6E226
Washington, DC 20202
Tracey.Sasser@ed.gov

**Service and receipt thereof will be the date indicated in the confirmation of receipt email for E-filing. Hard copies will NOT follow, due to consequences from the current COVID-19 event and modifications to office operations instituted by the U.S. Department of Education.

Courtesy copy to:

Sebrina Bradford
Debt Management Coordinator
Human Resources Services
Office of Finance and Operations
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
Sebrina.Bradford@ed.gov

Renu Kapur
Debt and Payment Management Group
Office of the Chief Financial Officer
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington DC 20202
Renu.Kapur@ed.gov