



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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*In the matter of*

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**Docket No. 20-20-WA**

Salary Overpayment  
Waiver Matter

Debt ID: 01401738623

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent, a U.S. Department of Education employee, has filed an overpayment waiver request seeking a waiver of a \$2,229.36 debt identified by Debt ID 01401738623. The overpayment in question occurred due to the Department's failure to deduct Respondent's health insurance premiums<sup>1</sup> in 30 pay periods, from March 2019 through April 2020.

With her waiver request, Respondent included a narrative explanation of the debt, her interactions with the Department regarding it, and a timeline of those interactions. Respondent also included documentary evidence: a leave and earnings statement, a Federal Employee Health Benefits (FEHB) election form dated October 29, 2019, a departmental information document explaining that transfer employees will have certain benefits automatically transferred from their previous agencies, and dozens of emails between Respondent and the Department.

On July 2, 2020, I issued an Order Governing Proceeding allowing Respondent until July 23, 2020 to submit any additional evidence or argument she wished. Respondent has since submitted the complete debt letter and resubmitted her waiver request package with all attachments. With the benefit of Respondent's submissions, I now proceed with ruling on Respondent's request for a waiver.

Based on the following analysis, I find that Respondent has failed to meet her burden to justify granting a waiver of the debt.

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<sup>1</sup> Federal employees and the government share the responsibility of paying health insurance premiums under the Federal Employees Health Benefits Act of 1959. Employees' shares of their premiums are shown as deductions on their leave and earnings statements. *In re M*, Dkt. No. 19-83-WA, U.S. Dep't of Educ. (Feb. 25, 2020) at 3-4 (citing *In re Eric*, Dkt. No. 10-06-WA, U.S. Dep't of Educ. (Mar. 31, 2011) at 2).

## 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.<sup>2</sup> 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.<sup>3</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>4</sup> It must also include Government records on which the overpayment determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.<sup>5</sup>

In this case, the debt letter indicates that the “overpayment was a result of deductions paid by your agency on your behalf for” the 30 pay periods in question.<sup>6</sup> Attached to the debt letter is a list of pay periods, each showing an “amount” and each described by the pay code name “HEALTH BENEFIT.” In her waiver request, Respondent demonstrated an additional understanding of the nature of the debt as accruing due to the Department’s failure to properly institute or pay for her FEHB benefits for a period of over a year starting when she transferred to the Department of Education in March 2019. 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.<sup>7</sup>

Respondent’s argument is focused entirely on satisfying the fault standard. To meet the fault standard, an employee must not know, nor should have known, of the erroneous payment.<sup>8</sup> Where an employee does know an overpayment has occurred, the employee cannot qualify for a waiver, but is expected to set aside money to repay it.<sup>9</sup> A reasonable employee with health

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<sup>2</sup> 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).

<sup>3</sup> 34 C.F.R. § 32.3.

<sup>4</sup> *Id.* § 32.3(a).

<sup>5</sup> *Id.* § 32.3(g).

<sup>6</sup> Letter dated May 18, 2020, from Interior Business Center to Respondent at 1.

<sup>7</sup> 5 U.S.C. §§ 5584(a), (b)(1); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3–5.

<sup>8</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>9</sup> *Id.*

insurance covered through FEHB is expected to recognize a lack of general health insurance premium deductions on his or her leave and earnings statements.<sup>10</sup>

Respondent asserts that the overpayment occurred solely due to departmental employees' "inaction or incompetence." Respondent cites a wide range of "serious performance failures" by the Department's staff for over a year after her transfer which delayed her FEHB benefits, Thrift Savings Plan enrollment, access to Employee Express, transfer of leave balances, and updating of tax information.<sup>11</sup> Among other consequences of Respondent's mishandled onboarding process, Respondent indicates that she had to "reinstate my health insurance (twice)."<sup>12</sup> Accompanying emails from departmental staff demonstrate their recognition that Respondent's onboarding was delayed,<sup>13</sup> mishandled,<sup>14</sup> and resulted in disruption of Respondent's FEHB enrollment.<sup>15</sup>

Nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. Furthermore, it is unclear when or if Respondent was actively receiving coverage under an FEHB plan during the course of the pay periods in question. The letter from her health insurance provider suggests that they had no knowledge of her employment at the Department of Education over 13 months after her transfer. Due to the delay in accessing Employee Express, it is also unclear from the evidence submitted when Respondent was able to review her leave and earnings statements. Respondent stated in a May 11, 2020 email to departmental staff that she recognized from reviewing past leave and earnings statements that no insurance premiums were deducted since April 2019. However, the question is whether Respondent knew or should have known of the overpayments as they occurred. Based on the Department's admitted systemic breakdown of processes during Respondent's onboarding, including a lack of access to leave and earnings statements through Employee Express, I find that Respondent satisfies the fault standard.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.<sup>16</sup> 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

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<sup>10</sup> *Id.* at 4–6.

<sup>11</sup> Letter from Respondent to OHA, dated June 12, 2020 (Waiver Request) at 1.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> Email from Office of the Secretary Staff to Respondent, dated April 25, 2019, indicating that Respondent "should have received an email from Employee Express" to gain access to Leave and Earnings Statements. Respondent transferred into the Department almost two months prior to this email exchange.

<sup>14</sup> Email from Office of the Secretary Staff to Respondent, dated May 21, 2019, indicating that Respondent was using advanced leave two and a half months after transferring into the Department because HR had not yet updated her leave balances.

<sup>15</sup> Email from Respondent to Office of Human Resources Staff, dated April 23, 2020, indicating that Respondent's health care provider intended to disenroll her; Email from Office of Human Resources Staff to Respondent, dated April 23, 2020, indicating that HR was "research[ing] this issue." This email exchange occurred well over a year after Respondent transferred to the Department.

<sup>16</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep't of Educ. (May 5, 2011) at 2–3.

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.<sup>17</sup>

In this case, Respondent does not present evidence weighing in favor of finding that repayment of the debt would be inequitable. Respondent requests a waiver because she does not believe she “should be held financially responsible for the Department’s failures.”<sup>18</sup> 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.<sup>19</sup> The nature of the debt is not punitive, but is merely the aggregate of the amounts which the Department should have deducted each pay period for Respondent’s FEHB premiums. Departmental staff properly indicated to Respondent that she would be billed for these premiums when her FEHB benefits were retroactively implemented.<sup>20</sup>

In past cases, waiver officials have held, ““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.””<sup>21</sup> Respondent does not demonstrate why payment of the retroactively billed premiums 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, 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, Respondent’s request for waiver of the debt to the United States Department of Education captioned Debt ID 01401738623 is **HEREBY DENIED**.

So ordered this 16th day of July 2020.

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Charles S. Yordy III  
Waiver Official

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<sup>17</sup> *In re 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).

<sup>18</sup> Waiver Request at 2.

<sup>19</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

<sup>20</sup> Email from Office of Human Resources Staff to Respondent, dated May 13, 2020 (“As we discussed, you will incur a bill due to the biweekly premium payments not being deducted.”)

<sup>21</sup> *In re 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).