



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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*In the matter of*

**ME,**

**Docket No. 20-49-WA**

Salary Overpayment  
Waiver Matter

Debt ID: 003081332154

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 \$4,817.40 debt identified by Debt ID 03081332154.<sup>1</sup> According to Respondent, the overpayment in question occurred due to the Department's "non-application of an annuity deduction to my first 5 pay periods since I was rehired by the Department of Education."<sup>2</sup>

On November 24, 2020, I issued an order staying this proceeding and staying any collection actions. I also issued a letter to Respondent requesting clarification of whether the Respondent wished to pursue the requested waiver, a pre-offset hearing to challenge the validity of the debt, or both. Respondent promptly replied to declare his intention to pursue only the waiver request. Therefore, I will lift the stay and adjudicate the waiver request.

With his waiver request, Respondent included a narrative explanation of the debt, the debt letter Respondent received, email interactions with the Department regarding the debt, a timeline of those interactions and other relevant events, a table showing the affected pay periods, and relevant leave and earnings statements. On November 24, 2020, I issued an Order Governing Proceeding allowing Respondent to submit additional evidence or argument if he wished. Respondent promptly responded with a copy of the same waiver request already submitted, adding a signed affirmation that the request contains exclusively true statements. With the benefit of Respondent's submissions, I now proceed with ruling on Respondent's request for a waiver.

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<sup>1</sup> Letter dated Nov. 2, 2020, from Interior Business Center to Respondent.

<sup>2</sup> Waiver Request at 1. Despite Respondent's statement that the debt arose over the course of five pay periods, the debt letter received by Respondent lists six pay periods in which Respondent was overpaid and for which the Department indicates its intent to collect repayment. Letter dated Nov. 2, 2020, from Interior Business Center to Respondent at unp. 1-2.

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

## 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>3</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>4</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>5</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>6</sup>

In this case, the debt letter indicates that the “overpayment was a result of a correction to a personnel action that was proceeded by your agency” for six pay periods, 202015 through 202020.<sup>7</sup> These pay periods span the period from July 5, 2020 through September 26, 2020.<sup>8</sup> Attached to the debt letter is a list of pay periods, each showing an “amount” and variously described by the pay codes “REGULAR,” “ANN LEAVE USED,” “SICK LEAVE – USED,” and “HOLIDAY – NOT WORKED” with corresponding adjustments for “applicable recoverables” showing tax withholding and other ordinary pay deductions. The debt letter does not explain the origin or nature of the overpayment or establish why it should be repaid.

In the waiver request, Respondent demonstrated an additional understanding of the nature of the debt. Respondent states he was “hired under the authority of the CARES Act to assist the Department with data analysis related to the current pandemic.”<sup>9</sup> As a reemployed annuitant, Respondent expected to receive a “Dual Compensation Waiver under 5 CFR 553.201 and 553.202” to avoid a reduction to Respondent’s retirement annuity.<sup>10</sup> Respondent believed his pay was incorrect since he was rehired, but expected the Dual Compensation Waiver to be

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<sup>3</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>4</sup> 34 C.F.R. § 32.3.

<sup>5</sup> *Id.* § 32.3(a).

<sup>6</sup> *Id.* § 32.3(g).

<sup>7</sup> Letter dated Nov. 2, 2020, from Interior Business Center to Respondent at unp. 1.

<sup>8</sup> U.S. General Services Administration, *2020 Payroll Calendar*, located at [https://www.gsa.gov/cdnstatic/GSA\\_2020\\_Payroll\\_Calendar-Revised.pdf](https://www.gsa.gov/cdnstatic/GSA_2020_Payroll_Calendar-Revised.pdf) (last visited Dec. 16, 2020).

<sup>9</sup> Waiver Request at 1.

<sup>10</sup> *Id.*

retroactive to his hire date because it was “one of the conditions of the agreement.”<sup>11</sup> Despite the lack of information in the debt letter, Respondent has shown an understanding of the nature of the debt and provided sufficient information for me to determine whether to grant his waiver 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>12</sup>

To meet the fault standard, an employee must not have known, nor should have known, of the erroneous payment.<sup>13</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>14</sup>

Nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. However, the question is whether Respondent knew or should have known of the overpayments as they occurred. Respondent asserts he was “VERY diligent in questioning the inconsistencies and discrepancies in my pay.”<sup>15</sup> In support of this statement, Respondent submitted an email dated July 23, 2020, in which he informed a departmental Human Resources employee that “my pay statement for the last pay period . . . shows my annual salary at only \$132,158 and it should be \$145,578 per my offer letter.” As of September 16, 2020, a Department employee stated the Dual Compensation Waiver was not yet completed. On September 17, 2020, Respondent stated his belief that his pay was adjusted “for this pay period . . . as a result of the Dual Compensation [W]aiver.” However, later email exchanges in October 2020 indicate that no Dual Compensation Waiver was granted by then, and Respondent’s waiver request states that no Dual Compensation Waiver was granted as of the date he filed the waiver request.

Respondent’s statements indicate that he reviewed his leave and earnings statements which showed payment in an amount that the Department has since determined was an overpayment. However, I find it reasonable in these circumstances that Respondent could not have known that he was receiving an overpayment, or how to correctly calculate his pay, due to the special circumstances of being a rehired annuitant. In fact, Respondent’s correspondence with the Department indicates his belief that he was being underpaid in July, while the debt letter indicates the Department’s intent to collect on an overpayment made during that time period. Respondent’s statements and the uniqueness of these circumstance lead me to conclude that Respondent did not know and should not have known he received overpayments in the relevant pay periods. Therefore, I find that Respondent satisfies the fault standard.

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<sup>11</sup> *Id.*

<sup>12</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>13</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>14</sup> *Id.*

<sup>15</sup> Waiver Request at 1.

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 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> The nature of the debt is not punitive; the debt is merely the difference between the amount paid by the Department and the amount the Department should have paid to Respondent in each pay period.

In this case, Respondent does not present evidence weighing in favor of finding that repayment of the debt would be inequitable. There is nothing in the record to suggest that repayment would be an unconscionable burden due to Respondent's financial circumstances. There is no indication that the amount of the overpayment is so substantial that repayment would be inequitable. Rather, Respondent requests a waiver of the overpayment because he "still do[es] not have the [Dual Compensation Waiver] in place," and "do[es] not feel that in the spirit of equity or fairness or with good conscience that I should be expected to repay this money."<sup>18</sup> Respondent also believes the Dual Compensation Waiver should be applied retroactively to his hire date.<sup>19</sup> Despite Respondent's assertion that receiving a Dual Compensation Waiver was a pre-condition of his accepting his offer of employment, there is no documentary evidence in the record supporting that assertion.

I have no authority to grant a Dual Compensation Waiver, nor may I waive a debt to provide the retroactive effect of a Dual Compensation Waiver. My authority is limited to determining whether to grant a waiver of a presumed-valid debt owed for an overpayment of salary. The question of whether the Department *should* grant a Dual Compensation Waiver and whether that waiver would apply retroactively, potentially eliminating the debt, is a question as to the validity of the debt. Ruling on the validity of a debt is a matter for a pre-offset hearing and outside of my authority as Waiver Official.<sup>20</sup>

Respondent does not demonstrate why payment of the cited amounts would 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 on the waiver request.

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

<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.

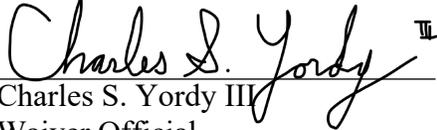
<sup>19</sup> *Id.*

<sup>20</sup> See 34 C.F.R. § 32.5(a) ("An employee who wishes a review of the existence or amount of the overpayment or an involuntary repayment schedule may request a pre-offset hearing.").

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, I hereby lift the stay of this proceeding. Respondent's request for waiver of the \$4,817.40 debt to the United States Department of Education captioned Debt ID 003081332154 is **HEREBY DENIED**. Respondent may request a pre-offset hearing within 10 days of receipt of this decision.<sup>21</sup>

So ordered this 23rd day of December 2020.

  
Charles S. Yordy III  
Waiver Official

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<sup>21</sup> 34 C.F.R. § 32.6(b) (“An employee who has requested a waiver under § 32.4(b) may request a [pre-offset] hearing within 10 days of receipt of a determination by the Secretary denying a waiver.”).