UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
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In the Matter of:

1802,

Respondent/Employee.

Docket No. 18-02-OF

Overpayment/Pre-offset Proceeding

Appearances: Redacted, Respondent/Employee, pro se.
Karen Mayo-Tall, Esq. Office of General Counsel, U.S. Department of Education

Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

The pre-offset authority involving a current employee of the U.S. Department of Education (Department or Department of Education) was delegated to the Office of Hearings and Appeals (OHA), which, thereby, exercises authority and jurisdiction to review the existence of a debt the United States claims to have against a current employee of the Department.[1] I am the authorized Pre-offset Official who has been assigned this matter by OHA.[2] Jurisdiction is proper under 5 U.S.C. § 5514 and 31 U.S.C. § 3716.

A Bill for Collection, identifying a debt owed by the Respondent/Employee, hereinafter Respondent, was issued by the Department of Interior on December 4, 2017. The Bill for Collection identified a debt in the amount of $114.99. The Bill for Collection indicates that the debt occurred following a correction to the Respondent's time record for pay period 21 of 2017.

[1] The Department's policy is set forth in the U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised January 2012), http://oha.ed.gov/docs/handbook.pdf .
[2] 5 U.S.C. § 5514(a)(2)(D).

By writing dated December 13, 2017, the Respondent filed an appeal of the alleged overpayment. Although the appeal was described as a request for a Waiver, the substance of the appeal suggested the Respondent was challenging the validity of the debt. The Respondent asserts that the debt is not owed because her time record was incorrectly revised for September 28, 2017. Clarification of the appeal request was obtained. The Respondent advised she was appealing only the validity of the debt and not seeking a Waiver.[3] Consequently, this proceeding was commenced. With the issuance of an Order Governing Proceeding, collection of the debt and interest accruals were stayed while this hearing proceeded.

The Respondent argues that the time record amendment was incorrect because she worked a full day on September 28, 2017. The Respondent argues she completed a full day by adding time at the end of the day even though she did not report to work at the required time. The Respondent relies on guidance previously received and that she was allowed to vary her start and end times because she worked on a gliding schedule. Respondent also argues that her September 29, 2017 time record should be amended to reflect an earlier start time.[4] Respondent argues that management violated the Fair Labor Standards Act by not informing her that she should not work a full eight hours on September 28, 2017, after arriving later than her required start time. She cites the Fair Labor Standards Act in support of her claim that she is entitled to pay for the additional hours she added to the end of her day. She also alleges that she was charged with absence without leave (AWOL) improperly, contrary to the requirements of in the Collective Bargaining Agreement (CBA).

The Department argues that the debt is valid and the amendment to the Respondent's time record was proper. The Department asserts that because the Respondent's office was hosting a national conference, the Respondent was expected to arrive at work at a fixed time (8:00 a.m.) on September 28, 2017. The Department contends the Respondent failed to follow proper procedures when she did not report at the scheduled time and failed to properly request permission to work later that same day to make up the time missed due to her late arrival. The Department contends that Respondent was on notice she could not simply add time at the end of the day to make up work missed due to unscheduled late arrival. The Department also argues that Respondent is required to accurately record her time and attendance and did not, despite agreeing to amend the time record when her supervisor directed that an amendment would be required.

The Department also requests that this Tribunal address whether Respondent has established extreme financial hardship so that Respondent may be relieved of involuntary collection of this debt. The Respondent did not request this relief or offer any evidence to establish extreme financial hardship. Consequently the issue of extreme financial hardship as relief to an involuntary repayment schedule is not properly before this Tribunal.

The jurisdiction of this Tribunal is limited only to the issue as described herein, namely whether the alleged debt of $114.99, is a valid debt.[5]

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[3] The Waiver proceeding, Docket No. 17-74-WA, was dismissed by Order dated January 18, 2018.

[4] Although the Respondent asserts she actually started work on September 29, 2017 earlier than what was reported, verified, and certified, that assertion is not relevant to the issue in this appeal.

[5] In the request for appeal, the Respondent submitted supporting documentation of a Notice of Proposed Suspension, dated December 5, 2017. That Notice advised the Respondent of an opportunity to reply. This decision

II. Issues

The issue before this Tribunal is whether the Respondent is liable for the assessed debt, reflecting net pay for 2.25 hours of work in pay period 21of 2017 (September 17 – September 30, 2017).

III. Legal Framework/Applicable Laws and Regulations

A head of a Federal executive agency is authorized to try and collect a claim of the United States Government arising out of the activities of, or referred to the agency.[6] A head of a Federal executive agency may collect the claim by administrative offset after giving specific written notice and providing a comprehensive explanation of the rights to the debtor.[7] Consistent with the requirements of this statute, the Department has proscribed regulations related to collecting debts by administrative offset.[8]

The collection of debts by administrative offset requires specific notice at least 30 days before initiating a deduction.[9] An employee may challenge the existence or amount of an overpayment and may also challenge the involuntary repayment schedule by requesting a pre-offset hearing.[10] An employee challenging the involuntary repayment schedule must establish that collection of the involuntary repayment will cause extreme financial hardship and the involuntary repayment schedule should be reduced.[11] Involuntary repayment schedules are based on a percentage of an employee's disposable pay. The regulations define disposable pay as the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement program; premiums for health and basic life insurance benefits; and other deductions that are required by law to be withheld.[12] The regulations allow involuntary collection of a specified amount or periodic deductions of 15% of disposable pay upon notice and until the debt is satisfied.[13]

The standard of review for assessing the validity of the debt is whether the debt is clearly erroneous.[14] A determination is clearly erroneous if the hearing official is left with a definite and

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does not address the disciplinary issues raised in that Notice of Proposed Suspension.

[6] 31 U.S.C. § 3711(a)(1).

[7] *See,* 31 U.S.C. § 3716.

[8] *See,* 34 C.F.R. Part 32.

[9] 34 C.F.R § 32.3. Specifically, the notice must be in writing, identify the origin, nature and amount of the overpayment, explain how interest is charged and how administrative costs and penalties will be assessed, demand repayment and allow an employee to enter into a voluntary repayment agreement, in the absence of a voluntary repayment agreement explain how the debt will be collected (involuntary), explain the right to request a waiver and the right to request a pre-offset hearing concerning the existence of the debt or the involuntary repayment schedule, describe the applicable hearing procedures and requirements, notice that any amounts paid or deducted but later waived or found not owed will be returned, and that any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures or civil or criminal penalties.

[10] 34 C.F.R. § 32.5.

[11] 34 C.F.R. § 32.4(c).

[12] 34 C.F.R. § 32.2.

[13] 34 C.F.R. § 32.3(e).

[14] 34 C.F.R. § 32.9(b).

firm conviction that a mistake in determining the overpayment was made.[15] If the debt determination is "plausible in light of the record viewed in its entirety," the hearing official may not reverse the determination even if the "hearing official would have weighed the evidence differently."[16]

The Respondent is an employee of the Department who, during all periods relevant to this matter, held a position included in the bargaining unit that is exclusively represented by the American Federation of Government Employees, AFL-CIO and its agent, the National Council of Education Locals American Federation of Government Employees, AFL-CIO, Council 252. As such, the Respondent's conditions and terms of employment are subject to the collective bargaining agreement (CBA) between the Union and the Department in effect during the relevant times herein (September 28, 2017 through November 17, 2017).[17] Article 39 of the applicable CBA addressed leave, Article 40 addressed alternative work schedules, and Article 44 addressed telework.

The applicable CBA defined absence without leave (AWOL) as "any absence from duty that is neither requested, granted nor approved according to the provisions of the law, applicable regulation, this Collective Bargaining Agreement, and/or Department policy."[18] Under the applicable CBA, when an employer determined it was necessary to charge AWOL for an employee, the employer was required to notify the employee of this decision, the reason for it, and the date and time for which it was charged, in writing within 24 hours of making the decision and no later than the end of the pay period in which the employee was AWOL. The applicable CBA required that notice should be given in person if the employee is in the office or via email and mail if the employee is not in the office and/or would not be in the office within a reasonable period of time. After receiving notice, the employee can claim that another type of leave was appropriate instead.[19]

In the applicable CBA, gliding schedules were a type of flexible schedule under Section 40.07. The terms of the applicable CBA provided: "An employee for whom a gliding schedule has been approved may vary his/her start time on a daily basis within a band from 7:30 a.m. to 9:30 a.m. Each work day shall be scheduled for eight and one-half (8.5) hours, including lunch break, and the employee may depart eight and one-half (8.5) hours after arrival."[20] The applicable CBA described a "core period" between 9:30 a.m. and 3:00 p.m. in which employees were required to be on work duty unless they were on leave, lunch break or using credit hours.[21] Pursuant to the applicable CBA, arrival and departure times could not be modified by working instead of taking scheduled breaks.[22] In addition, the applicable CBA indicated that "[e]mployees on gliding schedules shall inform their supervisor of any anticipated change in their normal arrival time (i.e., to the extent known in advance)."[23] They were required to receive

[15] *Id*.
[16] *See Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985).
[17] The applicable CBA became effective on December 17, 2013. That CBA was in effect through March 11, 2018.
[18] The applicable CBA, Section 39.10.
[19] *Id.*
[20] CBA, Section 40.07(b).
[21] CBA, Section 40.03.
[22] CBA, Section 40.09(D).
[23] CBA, Section 40.07(B)(2).

supervisor approval for absences and before working or using credit hours. Employees were required to comply with approved times for arrival and departure, and were responsible for recording accurate time and attendance each day.[24]

The applicable CBA also allowed supervisors to make temporary changes to employees' schedules, including employees with flexible schedules, as needed for training, travel and other work needs. In such cases, the supervisor was required to tell employees of the change and reason for it.[25] Supervisors also could require employees to report to the regular work site to perform work that cannot be done from an alternate site even when a telework agreement would otherwise allow work from an alternate site. [26]

The Fair Labor Standards Act (FLSA) of 1938, as amended, 29 U.S.C. § 201, *et seq.,* is a comprehensive law that establishes minimum wage, overtime pay, recordkeeping, and child labor standards for workers in the private sector and in Federal, State, and local governments.[27] Specific regulations relating to wages and hours worked fall under the purview of the Wage and Hour Division of the Department of Labor (29 C.F.R. Subt. B, Chapter V). Generally, work that is not requested but suffered or permitted is considered work time (29 C.F.R. § 785.11). Generally, it is the duty of management to exercise its control and see that work is not performed if it does not want it to be performed (29 C.F.R. § 785.13). Furthermore, management has the power to enforce the rule and must make every effort to do so (*Id.*).

IV. Analysis

A. The Bill for Collection as notice of debt sent to the Respondent is defective and the Department has failed to follow its own regulations and policy as related to administrative offset.

Although the Respondent has not raised adequacy of the notice in this request for a pre-offset hearing, a brief review of the regulatory requirements for notice and the Department's policy/procedure is appropriate. The Department of the Interior (DOI) provides payroll and debt services to the Department of Education. Despite this relationship, the Department of Education alone remains responsible for the implementation of its regulations and is solely responsible for adhering to the regulations as related to salary offset when recovering overpayments of pay or allowances from Department employees. In addition to published regulations, the Department has established policy regarding administrative collection of debts from employees.[28]

The procedures implemented in this action by the Department fail to follow the Department's own regulations and policy. Department policy directs that once the DOI identifies a salary overpayment, a Bill for Collection is generated and forwarded to the responsible office within the Department for initial intake and investigation.[29] The responsible office, which is the

[24] CBA, Section 40.05.
[25] CBA, Section 40.10(C)(1).
[26] CBA, Section 44.08.
[27] *Handy Reference Guide to the Fair Labor Standard Act,* Wage and Hour Division of the United States Department of Labor, https://www.dol.gov/whd/regs/compliance/hrg.htm .
[28] *See Footnote 1*, and hereinafter referred to as the Handbook.
[29] Handbook, Section VII.

Office of Human Resources within the Office of Management, conducts an investigation and determines whether further collection action is justified.[30] If collection is justified, prior to initiating a deduction from the disposable pay of an employee, the Department is responsible for sending written the required notice to the employee.[31] While the regulations do not specify the manner of delivery, Department policy requires the notice be sent by certified mail, return receipt requested.[32] Department policy and regulations require that the Department attach all supporting documentation to the notice, and if not so attached, provide specific instruction how the employee may inspect and copy those supporting records.[33]

In this case, which is consistent with general practice in salary offset proceedings for current employees at the Department; the Department has relied on the DOI, Interior Business Center for issuance of the notice. The notice, in the form of a Bill for Collection, mailed to the Respondent by the DOI, Interior Business Center fails to meet the regulatory requirements for pre-offset notice. The Bill for Collection does not satisfy the regulatory requirements in that the Respondent was not offered an opportunity to enter into a voluntary repayment agreement; it did not explain how interest will be charged or how administrative costs and penalties will be assessed; it did not adequately or clearly explain the right to request a pre-offset hearing; it did not provide notice that any amounts paid or deducted but later found waived or not owed will be returned; it did not provide notice that any knowingly false or frivolous statement, representation or evidence may subject the employee to applicable disciplinary procedures or civil or criminal penalties; and the notice failed to provide the Respondent the regulatory mandated 30 days before the Department initiates collection by deduction. The Department offered no explanation or justification for its failure to follow the regulatory and policy requirements. Despite the Department's failure to provide adequate notice, the Respondent timely requested an appeal and was provided an opportunity to fairly challenge the alleged overpayment. Therefore, my analysis of this pre-offset request will continue on the merits.

B. The debt is valid and the Department is required to pursue collection.

The debt is valid, and the Department was correct in finding an overpayment and pursuing collection. The Department has an obligation to follow terms of the applicable CBA and Department policies. Respondent does not dispute that for the week of September 26, employees on Respondent's team were required to arrive at the regular duty station at 8:00 a.m. for a conference. The applicable CBA allowed the supervisor to make temporary changes to flexible work schedules as long as notice and reasoning was given. The evidence establishes that the supervisor provided the required notice and reasoning. Therefore, Respondent's usual flexible start time of 7:30 a.m. to 9:30 a.m. was not applicable and telework was suspended for September 28, 2017. The evidence clearly establishes the Respondent was required to report to work at her usual duty station at 8:00 a.m. on that date and was expected to work a full tour of duty, ending at 4:30 p.m. The evidence also clearly establishes the Respondent did not report to work at the required time and only after the supervisor made contact by texting a message to the Respondent's personal phone did she indicate she was running late. The Respondent contends

[30] *Id.*
[31] 34 C.F.R. §32.3.
[32] Handbook, Section VII.
[33] *Id.* and 34 C.F.R. § 32.3(g).

she arrived at work at 9:50 a.m. but failed to provide any corroboration in support of that contention. The supervisor, in an affidavit, establishes she observed the Respondent arrive at the conference at 10:10 a.m.

The evidence shows the Respondent validated her time and attendance record for pay period 21-2017 on September 27, 2017. At the time of validation, the Respondent's time record showed she worked from 8:00 a.m. to 4:30 p.m. on September 28, 2017. Respondent's time record was certified by her supervisor on September 27, 2017.[34] The time, as recorded when verified and certified for September 28, 2017 conforms to the directive to arrive at 8:00 a.m. and the CBA's gliding schedule description that indicates departure is 8.5 hours after arrival, but does not reflect the period of unanticipated late arrival that actually occurred on September 28, 2017. Based on the time the Respondent was observed at the conference, she had arrived about 2.25 hours later than her required start time for September 28, 2017.

It is undisputed that Respondent did not request time off or communicate any reason for being late to work before she arrived on September 28, 2017. There is no other indication in the record that time off was requested, granted, or approved for Respondent that day. Instead, the evidence establishes that on September 29, 2017 the supervisor advised the Respondent to "submit an adjustment next week if a leave slip is necessary" to account for her late arrival on the prior day.[35] Apparently "an adjustment" was necessary because the Respondent's time and attendance for that pay period was already processed, despite the fact that the pay period did not end until September 30, 2017.[36] Notably, the Respondent responded to this directive in the affirmative, with an "Ok".

Thereafter, the record shows protracted communications between the Respondent, the supervisor, and other department employees, as related to the achievement of the suggested and agreed to "adjustment." The protracted communications reveal the Respondent proposed an adjustment to her reported worktime suggesting she worked a full tour based her stated arrival of 9:50 a.m. and departure at 6:20 p.m. on September 28, 2017.[37] Under the circumstances as established by the evidence of record, this usual practice of verifying, certifying, and processing of time and attendance records for payroll prior to the end of the actual pay period resulted in misrepresentation of actual hours that were worked or now alleged to have been worked. Because the time and attendance was processed before the required hours were actually worked, or in this case not worked, an in incorrect payroll payment was made to the employee. Since this time record was verified, certified, and processed prior to the end of this pay period, the

[34] The supervisor indicated this early verification and certification of time and attendance records is a "usual practice." Also notable, the Respondent provided no explanation for the 20 minutes between 9:30 a.m., the latest flexible arrival time, if using a gliding schedule, and 9:50 a.m., her stated, but uncorroborated, arrival.

[35] The record provides no clear explanation or understandable directive of how an adjustment was to be submitted. A more precise directive, such as "you must submit a leave request for unexpected absence on September 28, 2017" would have provided more specific information regarding the supervisor's expectation.

[36] The Department failed to produce any evidence and I could not identify a Department policy or procedure that authorizes an "adjustment" as was suggested by the Supervisor. Given that the time record for this pay period was already processed, the Respondent could not change the reported work hours to reflect her actual report time.

[37] Notably, the employee does not provide any explanation for the additional 20 minutes from her stated arrival until she was present at the required conference.

Supervisor was required to correct the time record.[38]

In response the employee's proposed adjustment, the supervisor notified the employee by email on October 3, 2017 (at 9:30 a.m.) that she is still waiting for the employee's "timesheet correction" that reflects her start time of 10:10 on September 28, 2017. This communication resulted in another set of protracted email communications between the Respondent, the supervisor, and other department employees. On October 11, 2017, the supervisor directed the employee to "update your actual hours worked on Thursday, September 28, 2017, " to "submit a leave slip in WebTA for the time absent on Thursday morning," and to do so no later than 4:00 p.m. on Thursday, October 12, 2017. In response, the employee alleged this directive violates the Fair Labor Standards Act, and pursued another round of email communications between the Respondent, the supervisor, and other department employees.

On November 17, 2017 the supervisor provided notice that the employee's absence on September 28, 2017 from 8:00 a.m. until 10:15 a.m. has been corrected in WebTA to reflect Absent Without Leave. Following this notice and amendment, the evidence shows the employee contacted a Department employee who appears to be her second line supervisor, indicating "an error has been made with her timesheet" and inquiring if there is "any interest at your level in resolving it."

Applying these facts to the applicable law, regulations, and CBA, the alleged debt is valid. Because the Respondent was absent for a period of her required workday and the time record was already approved, an amendment to the time record on the WebTA system had to be made. On September 29, 2017, the day after the unscheduled absence, her supervisor requested that she submit necessary adjustments. More specific requests were made on two dates in October, 2017. Finally, on November 17, 2017, the September 28, 2017 time record was amended by the supervisor to reflect AWOL from 8:00 a.m. to 10:15 a.m., and work from 10:15 a.m. to 4:30 p.m.[39] This amendment reflected the times for which Respondent was known to have worked within the required schedule for that day. Because a specific work schedule was required, the Respondent was not expected to, and did not have permission to work outside the required schedule for September 28, 2017. This conclusion is consistent with the terms of the applicable CBA, as well as the more general standards embodied in the Fair Labor Standards Act.

Respondent's argument that her work hours from 9:45 a.m. to 6:15 p.m. on September 28, 2017 were allowable because of guidance she received in 2016 allowing her to add working time to the end of the day to fulfill hours-per-day obligations is not supported. First the evidence of record offers contradictory information regarding the guidance and circumstances that occurred in 2016. Second, the Respondent had received proper notice of the required change in schedule for September 28, 2017. Third, the Respondent failed to notify the Supervisor at the

[38] *See, WebTA Electronic Time and Attendance System, Quick Reference Guide for Supervisors*. A time record correction is processed by the timekeeper. (*See, WebTA Electronic Time and Attendance System, Quick Reference Guide for Timekeepers.* In general, the correction of a time record is known as an amendment to the record.

[39] Work periods are recorded in quarter hour periods. Arrival and departure times can only be recorded in WebTA on the quarter hour. Thus, although the employee appeared at the conference at 10:10 a.m., her start time is based on the next quarter hour, 10:15 a.m.

earliest possible time when she realized she would be late to work, the reason for the lateness, and how she expected to account for the required workhours for on September 28, 2017. Fourth, the employee failed to request approval to work outside the required schedule for September 28, 2017. Fifth, the work hours from 9:45 a.m. to 6:15 p.m. are inconsistent with the requirements for a gliding schedule which allows a flexible start time in the band between 7:30 a.m. and 9:30 a.m. and ending 8.5 hours from the start time, therefore ending no later than 6:00 p.m. Lastly, the Respondent's unilateral determination to ignore the required work schedule for September 28, 2017, report later than her required report time without proper notice to the supervisor, and to work 8.5 consecutive hours from time of her late arrival without approval from a supervisor, is not consistent with the CBA requirements. Apparently, the Respondent presumed she would be authorized to extend her workday based on her later arrival, but offered no explanation as to why she believed she could work beyond 6:00 p.m., the latest allowed departure time for an employee working a gliding schedule who started work at the latest allowable start time of 9:30 a.m.

Respondent's argument that the Fair Labor Standards Act regulations establish that she was due compensation for the work her employer benefitted from and that the employer had a duty to inform her she could not add time to the end of her day to make up for missed hours is not persuasive. While the Respondent argues application of the Fair Labor Standards Act, she provides no specific legal support as to why that Act applies in this situation. Instead the Respondent attempts to use general principles/protections of this Federal statute as cover for her own disregard of the terms of the CBA, her failure to report at the required time, her failure to report an unscheduled absence, her misapplication of the allowances in a gliding schedule, and her unilateral decision to extend her workday until 6:15 p.m. Consequently, the Respondent's vague reliance on the Fair Labor Standards Act to challenge the validity of this overpayment must be rejected.

This debt is plausible in the light of the record viewed in its entirety and, therefore, is valid.

V. Findings of Fact

1. At all times relevant to this matter, the Respondent was an employee of the Department of Education.

2. At all times relevant to this matter, the Respondent held a position included in the bargaining unit that is exclusively represented by the American Federation of Government Employees, AFL-CIO and its agent, National Council of Education Locals No. 252.

3. At all times relevant to this matter, the Respondent's conditions of employment were subject to the terms of the Collective Bargaining Agreement between the U.S. Department of Education and the National Council of Education Locals No. 252 that was effective between December 13, 2013 and March 11, 2018.

4. At all times relevant to this matter, consistent with the terms of the applicable Collective Bargaining Agreement, the Respondent was working a gliding schedule,

which allowed her to begin the 8.5 hour work day between 7:30 and 9:30 a.m. Pursuant to the Respondent's usual gliding schedule, she started work at 7:30 a.m. on Mondays, Thursdays, and Fridays and started work at 8:00 a.m. on Tuesdays and Wednesdays.

5. At all times relevant to this matter, consistent with the terms of the applicable Collective Bargaining Agreement, the Respondent had an approved telework agreement, allowing her to work at an alternate worksite on Monday's, Thursday's, and Friday's, starting at 7:30 a.m. and ending at 4:00 p.m.

6. The Respondent's office hosted a national conference in Washington, DC on September 26-28, 2017 (Tuesday, Wednesday, and Thursday).

7. All of the employees in the Respondent's office were properly notified of a temporary change in approved work and telework schedules for the duration of the national conference. The temporary change required all Team employees to report to work at the Education Offices in Washington D.C. and work required hours beginning at 8:00 a.m. and ending at 4:30 p.m. for each day of the scheduled conference.

8. Pay period 21-2017 began on September 17, 2017 and ended on September 30, 2017.

9. Consistent with the terms of the applicable Collective Bargaining Agreement, employees are required to comply with approved times for arrival and departure from work and are responsible for accurately recording time and attendance each day.

10. On September 27, 2017, the Respondent verified her time record for pay period 21-2017 and the supervisor certified her time record for pay period 21-2017. The reported hours for September 28, 2017 identified a start time of 8:00 a.m. and an end time of 4:30 p.m. The reported hours were processed automatically on September 28, 2017. Upon processing of this time record, the Respondent was paid for work time from 8:00 a.m. to 4:30 p.m. on September 28, 2017.

11. On September 28, 2017, the Respondent failed to report to work at the required time of 8:00 a.m. and failed to initiate contact with her supervisor to advise she would be late arriving at work.

12. On September 28, 2017, at about 8:50 a.m., nearly 50 minutes after the Respondent was required to report on work, the supervisor contacted the Respondent by text message, inquiring why she had not reported to work at the required time.

13. At about 9:19 a.m., the Respondent replied by text message, indicating she was unexpectedly running late.

14. On September 28, 2017, the supervisor observed the Respondent joining the conference at about 10:10 a.m.

15. On September 29, 2017, the supervisor provided written notice to the Respondent that an adjustment, with leave slip, if necessary, will be required to her time record for

September 28, 2017 due to her late arrival on that date.

16. The evidence shows protracted email communications between the supervisor, the Respondent, and other Department employees following the September 29, 2017 supervisor communication following the September 29, 2017 supervisor communication.

17. The Respondent eventually proposed she was not required to submit a leave slip for September 28, 2017 because she worked a full tour of duty, having started her day at 9:50 a.m. and working until 6:20 p.m.

18. On October 3, 2017, the supervisor provided written instruction that she had not yet received the required information for a correction to the Respondent's September 28, 2017 time record.

19. On October 11, 2017, the supervisor provided written instruction to the Respondent that she needed to submit a leave slip for her absence on the morning of September 28, 2017.

20. The Respondent responded, indicating she believed the directive to submit a leave slip for her absence on September 28, 2017 was a violation of the Fair Labor Standards Act and the evidence shows another round of protracted email communications between the Respondent, the supervisor, and other department employees ensued.

21. On November 17, 2017, the supervisor provided written notice to the Respondent that a time record correction was made to the Respondent's September 28, 2017 time record, reflecting absent without leave for the period 8:00 a.m. to 10:15 a.m. because she failed to request leave for her unscheduled absence during that period.

22. The Respondent has failed to establish she properly reported her unanticipated late arrival on September 28, 2017 or that she requested permission to work outside the required work schedule for that date.

23. On December 4, 2017, the Department of Interior issued a Bill for Collection notifying the Respondent a debt of $114.99[40] resulted following a time record correction of 2 hours and fifteen minutes for pay period 21-2017.

24. The Respondent filed a timely request for a pre-offset hearing on December 13, 2017.

VI. Conclusion and Order

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

[40] The gross pay adjustment for 2.15 hours is $132.84. Applicable recoverables reduced the amount of the overpayment to the employee to $114.99.

1. The Department has established a valid debt of $114.99.

2. The Respondent is liable for this debt and consistent with 34 C.F.R. §32.4(a), within 7 days of the date of this Decision, the Respondent may request a voluntary repayment schedule.

3. If the Respondent fails to request a voluntary repayment schedule within 7 days of the date of this Decision, the U.S. Department of Education may recover this debt by involuntary offset consistent with the applicable law and regulations. The Department is authorized to collect the entire debt due in one offset provided the collection of $114.99 does not exceed 15% of the Respondent's disposable income for one pay period.

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Angela J. Miranda
Administrative Law Judge

Dated: __ November 8, 2018____