



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 21-14-WA**

**LE,**

Salary Overpayment  
Waiver Matter

April 11, 2021 Debt Letter

Respondent.

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**DECISION GRANTING WAIVER REQUEST IN PART**

Respondent, a former U.S. Department of Education employee, has filed a request for an overpayment waiver with regard to a \$14,236.39 debt identified in an April 11, 2021 letter titled Initial Notification of Salary Overpayment (Debt Letter). The overpayment in question occurred due to the Department's erroneous classification of Respondent's transfer to the Transportation Security Administration (TSA) as a "resignation action."<sup>1</sup> The undersigned has been appointed by the Office of Hearings and Appeals as the Waiver Official with jurisdiction to rule in this case.<sup>2</sup>

On April 14, 2021, I issued an order staying this proceeding, including all deadlines, interest accrual, and collection actions, pending resolution of a related pre-offset hearing. The pre-offset hearing, serialized as 21-15-OF, has since concluded. Therefore, I lift the stay of this proceeding and issue the following decision.

Ordinarily, a Waiver Official issues an order governing proceeding to explain the waiver process and provide the Respondent with an opportunity to submit arguments and documentation in support of the waiver request. In this case, Respondent has already supplied all necessary documents and provided a narrative explanation of the matter. Based on the resolution of this case described below, I forego issuing a procedural order and proceed directly to deciding the case. I find that Respondent has met his burden to justify granting a partial waiver of the debt.

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<sup>1</sup> Debt Letter at 1.

<sup>2</sup> The waiver authority involving former and current employees of the Department was delegated to 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. 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 “debt is a result of a correction to your exiting action. The resignation action effective 7/5/2020 (pay period 2020-15) was corrected to a term-appt action on 11/2/2020. A bill is needed for the annual leave lump sum hours that were paid out. The bill is generated for the employee to buy back the annual leave paid out in lump sum. 296 hours of annual leave was paid out.”<sup>6</sup> The Department asserts that the total debt amount is \$14,236.39.

Respondent provides a somewhat different explanation of the debt. Respondent indicates that he did indeed separate from the Department on July 5, 2020, after which he received an unsolicited payout of \$10,206.51.<sup>7</sup> Respondent discovered that the Department “had mistakenly paid me for my annual leave balance instead of carrying over those hours to my accounts at TSA. As a result, 232 hours of annual leave and more than 400 hours of sick leave were withheld from me.”<sup>8</sup> Contemporaneous emails support Respondent’s assertions. On September 29, 2020, Respondent first reached out to Department staff explaining that “I recently had 232 hours subtracted from my balance via a manual adjustment” and indicating he received a “payout for \$10,200.”<sup>9</sup> Additional emails supplied by Respondent show that he diligently communicated with Department staff through at least February 2021 attempting to compel them to resolve the Department’s mistake. Respondent also indicates he has “faithfully kept the \$10,206.51 to reimburse the federal government” but would experience “long-term, debilitating debt” if forced to repay the \$14,236.39 sum cited in the debt letter.

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>10</sup>

To meet the fault standard, an employee must not know, nor should have known, of the erroneous payment.<sup>11</sup> Where an employee does know an overpayment has occurred, the employee

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<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> Debt Letter at 1.

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> *Id.*

<sup>9</sup> Email from Respondent to Education and TSA Personnel dated Sept. 29, 2020.

<sup>10</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>11</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

cannot qualify for a waiver, but is expected to set aside money to repay it.<sup>12</sup> Nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. Respondent knew of the erroneous \$10,206.51 payment no later than September 2020, set aside those funds to repay them, and went to extraordinary lengths to encourage the Department to correct the error in a timely manner. Nothing in the record indicates Respondent knew or should have known that the Department would require him to repay any sum in addition to the \$10,206.51 figure. In these circumstances, 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>13</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. 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>14</sup>

The debt claimed by the Department includes additional taxes that would not have accrued if the Department had corrected its error in calendar year 2020.<sup>15</sup> Respondent indicates he has "gone almost a year without my leave hours" and the circumstances of this Departmental error require him "to pay ~\$4,000 out of my own pocket to buy those hours back," payment of which will result in "long-term, debilitating debt."<sup>16</sup>

In this case, Respondent received an erroneous payment of \$10,206.51 which he states he dutifully retained to repay it to the Department. Though willing and able to repay this amount to facilitate correction of the Department's mistake, Respondent could not compel the Department to correct the error in a timely manner despite months of his consistent efforts. Payment of several thousand dollars to the Department, of Respondent's own money, to correct a tax liability incurred because the Department could not remedy its mistake despite Respondent's diligent and repeated communications, would be inequitable due to the unique circumstances of this case. Furthermore, the \$4,029.88 tax liability, incurred by the Department's initial erroneous action and subsequent months of inaction, is a substantial amount. Repayment of this amount, on top of the \$10,206.51 actually paid to Respondent's account, would pose a clear financial burden. Accordingly, I grant a waiver in the amount of \$4,029.88, the amount in excess of the \$10,206.51 which Respondent received in 2020.

Respondent has also requested that, in reviewing this case, OHA "help me as much as you can."<sup>17</sup> Unfortunately, my review is limited to waiving any portion of the debt for which repayment

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

<sup>13</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep't of Educ. (May 5, 2011) at 2–3.

<sup>14</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>15</sup> Waiver Request at 1.

<sup>16</sup> *Id.* at 1–2.

<sup>17</sup> *Id.* at 2.

would be inequitable. My review does not extend to compelling proper restoration of Respondent's leave hours.

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 described in the April 11, 2021 Debt Letter is **HEREBY GRANTED IN PART**. Debt in the amount of \$4,029.88 is waived.

So ordered this 11th Day of June 2021.

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Charles S. Yordy III  
Waiver Official