



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4615
TELEPHONE (202) 245-8300

In the Matter of

LE

Respondent

Docket No.: 21-15-OF

**Overpayment/Pre-offset
Hearing**

Appearances:

[redacted] for Respondent

Lydia Makande, the Office of the General Counsel, U.S. Department of Education, Washington, D.C., for U.S. Department of Education

Before: Daniel J. McGinn-Shapiro, Administrative Law Judge

DECISION

On April 14, 2021, the Office of Hearings and Appeals (OHA) received a request in relation to debt of \$14,236.39 that was filed by Respondent, a former employee of U.S. Department of Education (the Department). The debt is related to an erroneous payout of Respondent's leave balance when he transferred to another federal agency. Specifically, \$10,206.51 was paid as a lump-sum to Respondent rather than the leave being transferred over to his new agency. The remaining \$4,029.88 of the asserted debt consists of federal and state income taxes that were withheld from the lump-sum payment. The Department has indicated

that it is unable to recover this money from the relevant taxing authorities because the Department and its agents did not issue the bill to the Respondent to repay his erroneous lump-sum payment until 2021.¹

Facts and Procedural History

I. Erroneous Payout and Issuance of Debt Letter

Respondent previously worked in the Department's Office of Federal Student Aid (FSA). Effective July 5, 2020, Respondent left the Department when he transferred to the Department of Homeland Security's Transportation Security Administration (TSA).² On August 18, 2020, an SF-50 Notification of Personnel Action was issued indicating that, effective July 5, 2020, Respondent had resigned.³ FSA has its own human resources department (FSA-HR), and this SF-50 was signed by an authorized employee of that office. On September 21, 2020, Respondent received a lump-sum payout of \$10,206.51 labeled "ACH CREDIT DOI1 TREAS 310 FED SAL"⁴ for this annual leave balance. Respondent has stated that this payment was made directly into his bank account and without his "foreknowledge or permission."⁵ The Department has acknowledged that processing Respondent as a resignation rather than a transfer and making a payout for his annual leave balance was an error made by the Department.⁶

On September 29, 2020, Respondent emailed two FSA-HR employees to notify them of the erroneous payout and asked that they help him restore his leave balance.⁷ Respondent

¹ When the lump-sum payment was made for Respondent's annual leave balance, Respondent's gross earnings for the time covered by the leave was \$15,415.68. In addition to the \$4,029.88 in state and federal income taxes, \$1,179.29 in Social Security and Medicare taxes were also withheld. *See* Attachments to Request for Hearing (Doc. No 1) at 7; ED Exhibit 3 (Doc. No. 7) at 3.

² Request for Hearing (Doc. No 1) at 1; Dept. Brief (Doc. No. 6) at 1.

³ ED Ex 1 - SF-50 Notice of Personnel Action (Aug. 18, 2020) (Doc No. 7) at 1.

⁴ Respondent's Brief (Doc. No. 11) at 1.

⁵ *Id.*

⁶ Dept. Brief (Doc No. 6) at 2; Pre-Hearing Conference (May 18, 2021).

⁷ Attachments to Request for Hearing (Doc. No 1) at 8-9. In most of the emails that Respondent sent, he cc'ed employees at the Transportation Security Administration.

indicated that it was urgent that this be addressed because he had a large use-or-lose leave balance that he needed to reduce over the final months of 2020.

On October 16, 2020, Respondent emailed the original two FSA-HR employees (FHR1 and FHR2) and one other FSA-HR employee (FHR3).⁸ In his email, Respondent thanked FHR3 for having a conference call the prior week to discuss the leave issue and asked for an update. Respondent noted that they had determined that he was accidentally paid for his leave hours and indicated that he had the money that was paid out and “can give it back to Treasury according to whatever process it normally works with.”⁹

That same day, on Friday, October 16, 2020, FHR3 responded to Respondent by email.¹⁰ The Department’s agent for payroll processing is the U.S. Department of the Interior’s Interior Business Center (IBC). In her email, FHR3 indicated that she had spoken with an employee from IBC’s debt management branch and was told that she should reach out to the Department’s payroll contact at IBC because IBC had to “initiate a billing for you in order to pay the associated payout back to Department of Interior” and that directions from IBC on how this billing would be generated would be “forth coming.” FHR3 acknowledged that she had not previously handled this situation and would follow up the following Monday morning if she did not receive a response from IBC. FHR3, however, assured Respondent that “it was guaranteed by [IBC that] as long as we correct this prior to end of leave year this should not have any direct impact on you as it related to tax purposes.”

Two weeks later, on Friday October 30, 2020, FHR3 again contacted Respondent to let him know that FHR3 had spoken with IBC and they were in the process of generating a bill that

⁸ Attachments to Request for Hearing (Doc. No 1) at 12.

⁹ Attachments to Request for Hearing (Doc. No 1) at 8.

¹⁰ Attachments to Request for Hearing (Doc. No 1) at 11-12.

would be sent directly to him.¹¹ FHR3 further indicated that notification was being sent to the Department's main human resources office (ED-HR) to initiate a correction of his SF-50.

On November 2, 2020, FSA-HR processed an SF-50 correcting the error that had indicated that Respondent had resigned.¹²

Over two weeks later, on November 17, 2020, Respondent emailed the three FSA-HR employees again expressing concern that he had not received anything asking him to repay the erroneous payout.¹³ Respondent expressed concerns both related to his use or lose leave and about the tax implications if the matter was not addressed by the end of the year. That same day, FHR3 responded to Respondent that she would follow up with IBC and ED-HR and provide him an update the same day.¹⁴

The next day, on November 18, 2020, FHR3 emailed an employee in IBC's debt management branch (IBC-DMB1) inquiring about the status of Respondent's bill.¹⁵ FHR3 indicated in her email that IBC-DMB1 had told her that IBC would be doing manual billing so that Respondent could pay back the lump-sum payout and have his leave restored. FHR3 noted that Respondent had not received the bill yet and that because the year was ending soon, they needed to resolve the issue "immediately."

The same day, on November 18, 2020, IBC-DMB1 responded that because Respondent was not an active employee, the debt management branch could not issue a debt or collect from him.¹⁶ She further indicated that when Respondent transferred out of his position at the Department, he did not have any open debts, and that she had not received a manual bill for him.

¹¹ Attachments to Request for Hearing (Doc. No 1) at 10-11.

¹² See ED Exhibit 11 (Doc No. 10).

¹³ Attachments to Request for Hearing (Doc. No 1) at 10.

¹⁴ Attachments to Request for Hearing (Doc. No 1) at 14.

¹⁵ ED Exhibit 4 (Doc No. 7) at 20-21.

¹⁶ ED Exhibit 4 (Doc No. 7) at 20.

Finally, IBC-DMB1 advised FHR3 to contact the Department's point of contact for "payroll or benefits in IBC for help resolving this issue."

On December 4, 2020, Respondent once again reached out to the three FSA-HR employees.¹⁷ He stated that he had not received anything in the mail and asked if they had heard anything from IBC. He also asked for the name of someone at IBC or in ED-HR so that he could work on his case "at multiple levels."

On December 8, 2020, Respondent emailed two employees from ED-HR (EHR1 and EHR2).¹⁸ Respondent informed them about the situation, including that he had been incorrectly paid for leave after being processed as separated rather than transferred, that he had contacted FSA-HR in September, that FSA-HR said they were working with IBC to fix the mistake, and that it was especially urgent now "because of the tax implications of the \$10.k payout in calendar year 2020" and he was not sure about the status of approximately 12 days of use-or-lose leave. He further noted that FSA-HR employees had not responded to his request for a contact at IBC or in ED-HR and so a friend in the Department's Office of Elementary and Secondary Education had identified the two ED-HR employees for him to contact.

That same day, EHR1, who is a supervisor, responded that this was the first she had heard about his situation.¹⁹ She stated that she would start to work on it and provide Respondent with an update once she gathered some information.

Also on that day, another ED-HR employee (EHR3) exchanged a series of emails with IBC-DMB1.²⁰ EHR3 requested a copy of Respondent's bill. As she had told FHR3, IBC-DMB1 responded to EHR3 that Respondent did not have any open bills and that the last debt related to

¹⁷ Attachments to Request for Hearing (Doc. No 1) at 22.

¹⁸ Attachments to Request for Hearing (Doc. No 1) at 18.

¹⁹ Attachments to Request for Hearing (Doc. No 1) at 20.

²⁰ ED Exhibit 4 (Doc No. 7) at 17-19.

Respondent addressed an unrelated health benefit debt.

On December 18, 2020, Respondent once again emailed EHR1, cc'ing others including EHR2.²¹ He expressed that the situation was “quite serious at this point.” Further elaborating, Respondent stated that he was unable to exhaust his use-or-lose leave balance and that he was in “danger of forfeiting leave or suffering financial loss (or both) as we close out the calendar year.” He also noted that he was not receiving updates from the Department. Respondent further noted that although this situation had only come to EHR1’s attention “a few weeks ago,” he felt that his initial contacts at FSA “should have been elevating this situation,” and that he was “a little frustrated that they didn’t.”

On December 22, 2020, Respondent once again reached out EHR1, cc'ing others including EHR2, to ask if they had any additional information about the reinstatement of his leave.²² Respondent noted that he had not received any updates from the Department in over a month. Respondent expressed that, among other problems, because they were “days away from the new calendar year,” it was “almost a guarantee I’ll be asked to pay federal taxes on the \$10,200 I received in error.” Respondent expressed that the situation was causing him and his family “great anxiety.” He noted that he had included others from TSA on the email who were trying to help him, but they could not do anything “without close coordination from the appropriate office at Education.”

On January 4, 2021, Respondent followed up with FHR3.²³ He expressed that it had been “a few months” since he had heard about this leave situation. He noted that they were in a new year and he did not know what to do except elevate the case. Finally, he asked for any

²¹ Attachments to Request for Hearing (Doc. No 1) at 19-20.

²² Attachments to Request for Hearing (Doc. No 1) at 19.

²³ Attachments to Request for Hearing (Doc. No 1) at 22.

updates.

Trying another avenue for assistance, the next day, on January 5, 2021, Respondent contacted another ED-HR supervisor whose name he had received from his friend at the Department (EHR 4).²⁴ He explained to her the history of the situation. He also stated that the situation was “especially urgent because of the tax implications of the \$10.2k payout in calendar year 2020.” Additionally, Respondent expressed concerns about carrying a zero balance of sick leave and that he is worried about “the misappropriation-of-funds issue that exists.” Respondent asserted that no one from the Department was responding to him and he was unsure what to do next.

EHR4 responded the same day to Respondent that she would reach out to the Department’s benefits office and to FSA to determine what happened and how the corrections could be made.²⁵

On January 11, 2021, Respondent once again emailed EHR4 asking for an update.²⁶ EHR4 responded that day and notified Respondent that, because the action was processed by FSA-HR, she was including representatives from that office on the email to assist Respondent.²⁷

Later that same day, one of the leaders of FSA-HR (FHR Leader), who had been on EHR4’s email, responded with an email to Respondent.²⁸ He expressed that he understood the urgency of the matter and “was under the impression that this had been addressed a few months ago.” He stated that he would have his staff look into the issue and would have an employee respond by noon the next day with an update.

The next day, January 12, 2021, FSA-HR leader responded that his office was still

²⁴ Attachments to Request for Hearing (Doc. No 1) at 27.

²⁵ Attachments to Request for Hearing (Doc. No 1) at 28.

²⁶ Attachments to Request for Hearing (Doc. No 1) at 28.

²⁷ Attachments to Request for Hearing (Doc. No 1) at 33.

²⁸ Attachments to Request for Hearing (Doc. No 1) at 32.

looking into the matter.²⁹ He additionally noted that Respondent's person of contact was FHR3, who Respondent had originally worked with months earlier before Respondent began reaching out to others when the problem was not resolved.

That same day, EHR3 once again reached out to IBC-DMB1 stating that she still did not have a bill for Respondent.³⁰ EHR3 asked that IBC-DMB1 check to see if Respondent had a bill and, if so, send the bill to her. And when she did not receive a response, two days later, EHR3 emailed IBC-DMB1 again and included IBC-DMB1's supervisor (IBC-DMB2) to ask for an update.³¹

On January 19, 2021, IBC-DMB2 responded to EHR3.³² She once again noted that the only debt IBC had in their system was an unrelated health benefit debt. When EHR3 responded later that day and provided information about Respondent's erroneous payout, IBC-DMB2 responded with the same information that her employee had provided FSA-HR months earlier, that because Respondent had separated from the Department, their branch would not have received the debt.³³ Rather, the debt would have come directly from IBC's payroll office to the finance office at the Department of Education. IBC-DMB2 included the supervisor for IBC's payroll office (IBC-Payroll Supervisor) on the email so that she could provide an update.

Later that same day, on January 19, 2021, IBC-Payroll Supervisor sent EHR3 an email.³⁴ In her email, she noted that her office had not processed a manual bill for Respondent and asked if anyone from her office had been notified that a bill of collection was required. EHR3 responded that she had only contacted the supervisor and employee in IBC's debt management

²⁹ Attachments to Request for Hearing (Doc. No 1) at 31.

³⁰ ED Exhibit 4 (Doc No. 7) at 15-16.

³¹ ED Exhibit 4 (Doc No. 7) at 15.

³² ED Exhibit 4 (Doc No. 7) at 14.

³³ ED Exhibit 4 (Doc No. 7) at 13-14.

³⁴ ED Exhibit 4 (Doc No. 7) at 13.

branch.³⁵ IBC-Payroll Supervisor replied that she would assign a payroll technician to process the bill.³⁶

Over the next few months, Respondent emailed numerous employees and leaders in both FSA-HR and ED-HR asking for updates and expressing concern that he had not received his leave.³⁷ In approximately February 2021, Respondent's sick leave was restored.³⁸ The representative from the Department, however, has indicated that the Department will not restore Respondent's annual leave until he repays the erroneous payout.³⁹

Also in February and March 2021, EHR3 exchanged multiple emails with IBC's payroll office about obtaining the bill.⁴⁰ In March 2021, the bill was sent to ED-HR.⁴¹ On March 24, 2021, EHR3 emailed IBC-Payroll Supervisor asking if the bill was for more than he was paid out because federal and state income taxes were added.⁴² IBC-Payroll Supervisor responded the same day that EHR3 was correct and that "since this is a prior year bill, the IRS does not allow the state and federal taxes to be deducted from the bill of collection," whereas "[w]hen the lump sum was paid to the employee, federal and state taxes were deducted from the gross amount" that was paid to Respondent.⁴³

On April 11, 2021, EHR3 sent Respondent a letter entitled "Initial Notification of Salary Overpayment."⁴⁴ The letter indicated that as a result of the action correcting the erroneous

³⁵ ED Exhibit 4 (Doc No. 7) at 12.

³⁶ ED Exhibit 4 (Doc No. 7) at 11-12.

³⁷ Attachments to Request for Hearing (Doc. No 1) at 37-38, 41-44.

³⁸ Pre-Hearing Conference (May 18, 2021).

³⁹ Pre-Hearing Conference (May 18, 2021); Dept. Brief (Doc. No. 6) at 4.

⁴⁰ ED Exhibit 4 (Doc. No. 7) at 5-12.

⁴¹ ED Exhibit 4 (Doc. No. 7) at 5-7.

⁴² ED Exhibit 4 (Doc. No. 7) at 5.

⁴³ ED Exhibit 4 (Doc No. 7) at 4.

⁴⁴ Attachments to Request for Hearing, Letter from Sebrina Bradford to Respondent (April 11, 2021), (Doc. No 1) at 3-6.

resignation action “[a] bill is needed for the annual leave lump sum hours that were paid out.”⁴⁵ The letter indicated that 296 hours of annual leave were paid out and the amount of the debt was \$14,236.39.

II. Process Before OHA

On April 14, 2021, Respondent filed a request for a pre-offset hearing with OHA. After an Order Governing Proceedings was issued, the Parties filed briefs. Additionally, on May 18, 2021, the undersigned held a pre-hearing conference with the Parties to clarify certain aspects of the record. During the conference, counsel for Department represented that she would provide additional information to address two unanswered questions, which was timely submitted on May 19, 2021.

A. Respondent’s Arguments

Respondent has stated that he is challenging that he is responsible for the \$4,029 that was not paid to him in the lump-sum payment, but rather was withheld for the relevant tax authorities and currently not recoverable by the Department. He has indicated that he is not challenging that this is a valid debt, only that it is not his “responsibility to cover the expense of these taxes on behalf of [the Department].”⁴⁶ Respondent, however, does not dispute that he must return the \$10,206.51 that was paid to him. Respondent states that he has kept the funds paid directly to him to return to the Department in order for his accumulated annual leave to be restored.⁴⁷ Respondent also argues that he went to great efforts to avoid any tax consequences that may result by the late correction of the Department’s error in paying out a lump-sum payment of annual leave to him. Respondent asserts that it is not his responsibility to cover the expenses of

⁴⁵ Attachments to Request for Hearing, Letter from Sebrina Bradford to Respondent (April 11, 2021), (Doc. No 1) at 3.

⁴⁶ Respondent’s Brief (Doc. No. 11) at 1.

⁴⁷ Respondent’s Brief (Doc. No. 11) at 2.

the taxes the Department remitted to the IRS and that being forced to repay to the Department monies not received by him would cause him “financial distress.”⁴⁸ He further asserts that he is being required to pay taxes for both 2020 and 2021.

B. Department’s Arguments

The Department argues that Respondent owes for the full amount of the debt which includes “the net salary payment received by Respondent plus the income taxes that the Department paid to the Federal and state taxing authorities on Respondent’s behalf in calendar year 2020.”⁴⁹ The Department asserts that because “Respondent did not separate from Federal service, he was not entitled to the lump-sum payment for the 296 hours of accrued annual leave, nor was he entitled to the taxes credited to him in 2020 for that payment.” The Department contends that, under the applicable regulations from the Office of Personnel Management at 5 C.F.R. §550.1203, the Department makes a lump-sum payment for accumulated and accrued annual leave when an employee “separates or retires from Federal Service,” but generally may not make a lump-sum payment to an employee who instead transfers to another federal agency.⁵⁰ The Department further indicates that Respondent’s obligation to return the payout is governed by 5 C.F.R. §550.1206, which dictates that “an employee who receives a lump-sum payment for annual leave but is reinstated prior to the end of the period covered by the lump-sum payment, must refund the payment.” According to the Department, it took prompt and reasonable steps to correct the error that resulted in the lump-sum payout of Respondent’s annual leave and the

⁴⁸ In his request for a pre-offset hearing, Respondent also raises equitable arguments regarding the unfairness of being forced to repay funds that were not paid directly to him and that the Department’s delay may have costed him the ability to use his excess annual leave known as “use or lose” before the opportunity to take such leave expires. These equitable arguments are not at issue in a pre-offset hearing.

⁴⁹ Dept. Brief (Doc. No. 6) at 1.

⁵⁰ Dept. Brief (Doc. No. 6) at 3-4.

delays in addressing the situation do not negate the debt's validity.⁵¹ The Department also states that neither the applicable statute nor regulations require that the correction be made within a specific time frame.⁵²

The Department asserts that the overpayment is the \$15,415.68 gross overpayment which was taxable income for calendar year 2020 and the Department was required to forward the appropriate taxes to the federal, state, and local taxing authorities in the year in which the income was earned. The Department contends that once the bill of collections for the salary overpayment was generated, Respondent became obligated to return all overpaid funds, which usually is only the net amount received because the Department can ask the taxing authorities to adjust the employees tax records. The Department asserts that because Respondent received the salary overpayment in 2020, but the bill was not generated until 2021, the Department can only recover the taxes paid for Social Security and Medicare but not the other taxes withheld and credited to the employee. Accordingly, the Department states that the bill reflects a debt for the gross lump-sum payment, minus the amounts already paid by the Department for Medicare and Social Security taxes.

As noted, the Department asserts that the debt at issue consists of the net salary payment received by Respondent plus the unrecoverable taxes that the Department paid to the taxing authorities on Respondent's behalf in calendar year 2020.⁵³ The Department contends that Respondent is required to return the entirety of the overpayment, including the portion of the overpayment which was withheld for taxes and has now been credited as paid by Respondent.⁵⁴ In short, the Department asserts that, under the circumstances, Respondent was never entitled to

⁵¹ Dept. Brief (Doc. No. 6) at 4.

⁵² Dept. Brief (Doc. No. 6) at 4 n.6.

⁵³ Dept. Brief (Doc. No. 6) at 1.

⁵⁴ Dept. Brief (Doc. No. 6) at 5.

the gross amount of the overpayment, including the payment made for withheld taxes.

Issues

The issues to be addressed are:

- 1. Has the portion of the debt of \$10,206.51 which was erroneously paid out to Respondent been established as a valid debt owed by Respondent?**
- 2. Has the portion of the debt of \$4,029.88 consisting of income taxes for 2020 that the Department cannot recoup been established as a valid debt owed by Respondent?**

Summary of Decision

Both the net payment of \$10,206.51 that the Department erroneously paid to Respondent in September 2020 and the remaining balance of \$4,029.88 for taxes that the U.S. Department of Education cannot recover from the relevant taxing authorities are valid debts owed by the Respondent.

Principles of Law

The basis for the overpayment in this case is the erroneous lump-sum payout of Respondent's accumulated and accrued annual leave, which was paid out when the Department incorrectly processed Respondent's transfer to another federal agency as a separation from federal service. A lump-sum payout is defined as a final payment to an employee for accumulated and accrued annual leave.⁵⁵ An agency makes a lump-sum payout of annual leave when an employee separates from federal service.⁵⁶ An agency, however, cannot make a lump-sum payout to a federal employee who does not separate from federal service, but rather transfers to another position at another federal agency within the executive branch of the federal

⁵⁵ 5 C.F.R. § 550.1202.

⁵⁶ 5 U.S.C. § 5551; 5 C.F.R. § 550.1201(a)(1); 5 C.F.R. § 550.1203.

government.⁵⁷

Analysis

Both the statutory and regulatory authorities governing the lump-sum payout of accumulated and annual leave make it clear that the money cannot be paid to the employee if the employee transfers to another agency. Here, Respondent never left federal service; he merely transferred to another federal agency.

Respondent does not dispute that the payment of \$10,206.51 for Respondent's annual leave balance is a valid portion of the debt that Respondent must return. He, however, does argue that, although the portion of the debt that consists of tax payments that were withheld and sent to taxing authorities is a valid debt, it is not his responsibility to repay that portion of the debt. As the Department has acknowledged, this portion of the debt is only at issue because the Department failed to address the situation before the end of the 2020 calendar year. The Department itself would have been able to recover these tax payments if the agency had acted promptly and addressed its mistake within three months of being notified of its erroneous lump-sum payout. When Respondent received the erroneous payout, he promptly acted to have the error corrected and regularly followed up with the Department to attempt to remedy the situation before the end of 2020. Despite an FSA-HR employee being told in both October and November 2020 that she needed to work with IBC payroll and not IBC's debt management branch, however, there is no evidence that anyone from FSA or anywhere else within the Department properly contacted IBC payroll until the debt management branch supervisor forwarded the concern to the payroll manager on January 19, 2021. The Department's response to its unjustified error in processing Respondent's departure from the Agency as a resignation and

⁵⁷ 5 C.F.R. § 550.1203(h).

inability to timely remedy that error is that the applicable statutes and regulations do not “set forth a requirement that such corrections be processed in a specified period of time” and the delay does not invalidate the debt.⁵⁸

The Respondent was prompt, attentive, and diligent in his efforts to have this error corrected. The Department failed to meet its responsibility to properly process the July 5, 2020 personnel action as a transfer and then failed to correct the error it made in a reasonable period so the Department could have collected the withheld taxes directly from the taxing authorities. This may be disconcerting and may unfairly subject Respondent and his family to unnecessary stress, but these equitable considerations surrounding the cause of the debt are not at issue in this pre-offset hearing, only the question of whether the debt is valid, owed by the Respondent, and for the correct amount.⁵⁹ And, the law, as it is written, dictates that the delay in the Department remedying its error does not invalidate the debt or a portion of a debt owed to the Department.

The Department indicates 5 C.F.R. § 550.1206 governs Respondent’s return of the lump-sum payment.⁶⁰ This regulation, however, addresses the situation where a federal employee leaves employment at a federal agency and then is reemployed at the same or a different federal agency “prior to the end of the period covered by the lump-sum payment.”⁶¹ Despite the Department incorrectly processing Respondent’s departure from his position at the Department as a resignation, Respondent never left federal service and so could not have been reemployed at a federal agency.

5 C.F.R. § 550.1203 and 5 U.S.C. § 5551 provide the correct applicable law. That regulation and statute respectively address a federal agency’s authority and responsibility to issue

⁵⁸ Dept. Brief (Doc. No. 6) at 4 n. 2.

⁵⁹ See 34 C.F.R. § 32.5.

⁶⁰ Dept. Brief (Doc. No. 6) at 4.

⁶¹ See 5 C.F.R. § 550.1206(a).

“lump-sum payments” to federal employees for annual leave balances. And, as 5 C.F.R. § 550.1203(h) clearly states, as an employee of one agency in the federal executive branch transferring to a position in another federal agency, Respondent was not eligible for the “lump-sum payment” and, therefore, must return it. Whether Respondent is responsible to return the unrecoverable portion of the taxes to the Department, therefore, is controlled by whether that amount is part of the “lump-sum payment” erroneously paid to him.

The first rule of reading a regulation or statute is that where there is a plain meaning to the words in the law, we apply that meaning and look no further to try to introduce ambiguity or alter the meaning of those words.⁶² The statute states that the “lump-sum payment” equals “the pay (excluding [inapplicable sections of the statute]) the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave.”⁶³ The most applicable definition of the noun “pay” is “money paid, esp. for work or services; wages or salary.”⁶⁴ Here, Respondent’s salary for the period covered by the annual leave balance was \$15,415.68. This includes both the net payment made directly to Respondent through a deposit in his bank account and the money withheld and credited to his account at the relevant taxing authorities.⁶⁵ The Department’s Exhibit 3, which displays the information that would have been in a Leave and Earnings Statement, shows as much.⁶⁶ Respondent must, therefore, return the entirety of this pay.

⁶² See *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992) (further citation omitted) (noting that when interpreting statutes, “courts must presume that a legislature says in a statute what it means and means in a statute what it says there,” and that “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”) and *Black & Decker Corp. v. Commissioner of Internal Revenue*, 986 F.2d 60, 65 (4th Cir.1993) (“Regulations, like statutes, are interpreted according to the canons of construction.”).

⁶³ See 5 U.S.C. § 5551(a).

⁶⁴ *Webster’s New World College Dictionary* 1058 (4th ed. 2004).

⁶⁵ The money withheld from Respondent’s pay for Social Security and Medicare has been recovered by the Department and, therefore, it is not a part of the debt asserted by the Department. The 2021 IRS Employer’s Tax Guide indicates that Respondent may be eligible for a deduction or credit on his 2021 taxes for the wages that he repaid. See ED Ex 10 (Doc. No. 7) at 102.

⁶⁶ ED Exhibit 3 (Doc. No. 7) at 3.

Findings of Fact and Conclusions of Law

1. Effective July 5, 2020, Respondent left his position at the U.S. Department of Education.
2. Respondent did not resign from federal employment, but rather transferred to the U.S. Department of Homeland Security's Transportation Security Agency.
3. The U.S. Department of Education erroneously processed Respondent's personnel action as a resignation rather than a transfer.
4. The Department of Education erroneously issued a lump-sum payment to Respondent September 21, 2020 to buyout his annual leave balance. This included both the net payment of \$10,206.51 that was paid directly into Respondent's bank account and the taxes that were withheld and sent to the relevant taxing authorities.
5. The entirety of the lump-sum payment, with the exception of those taxes that are otherwise recoverable by the Department, has been established as a valid debt that is owed by Respondent.

Order

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

1. The Department has established a valid debt of \$14,236.39.
2. The Respondent is liable for this debt and consistent with 34 C.F.R. §32.4(a), within seven (7) days of the date of this Decision, the Respondent may request a voluntary repayment schedule or Respondent may pay this debt in full.
3. If the Respondent fails to request a voluntary repayment schedule within seven (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.

Daniel J. McGinn-Shapiro
Administrative Law Judge

Date of Decision: June 11, 2021