



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the matter of

FA,

Docket No. 21-16-WA

Salary Overpayment
Waiver Matter

Debt ID: 10961558222

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent, a U.S. Department of Education employee has filed an overpayment waiver request seeking a waiver of a \$2,158.39 gross debt identified by Debt ID 10961558222. The overpayment in question occurred due to the Department processing a within-grade pay increase prior to the applicable 104-week waiting period.¹

With the waiver request, Respondent included a narrative explanation of the debt, the debt letter Respondent received, and email interactions with the Department regarding the debt. With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I find that Respondent has failed to meet the 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.² 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.

¹ Waiver Request at 1.

² 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).

DISCUSSION

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.³ Among other things, that notice must explain the “origin, nature and amount of the overpayment.”⁴ 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.⁵

In this case, the debt letter indicates that the “overpayment was a result of an adjustment processed by the payroll office, a correction to a personnel action that was processed by your agency” for 14 pay periods listed in the letter.⁶ Attached to the debt letter is a list of pay periods, each showing an “amount” and each described by the pay codes “REGULAR,” “ANN LEAVE USED,” “SICK LEAVE – USED,” among others, with corresponding adjustments for “applicable recoverables” showing tax withholding and other ordinary pay deductions. In the waiver request, Respondent demonstrated an additional understanding of the nature of the debt. Respondent states a premature within-grade pay increase to GS-14, Step 5 was processed effective August 30, 2020, but it should not have been processed until April 11, 2021 due to the applicable 104-week waiting period. To correct the error, the Department canceled the within-grade increase. According to Respondent, a representative of the Department admitted the error was made by HR.

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.⁷

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.⁸ 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.⁹

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 indicates knowledge of the within-grade increase as it occurred, stating that “[t]he timing of this [within-grade increase] seemed appropriate, because my appointment date is August 23, 2015. Accordingly, each of my prior [within-grade increases] were processed in August and

³ 34 C.F.R. § 32.3.

⁴ *Id.* § 32.3(a).

⁵ *Id.* § 32.3(g).

⁶ Letter dated Apr. 5, 2021, from Interior Business Center to Respondent at unp. 1.

⁷ 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.

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

⁹ *Id.*

September.”¹⁰ However, Respondent asserts that the timing of the pay increase seemed appropriate because Respondent did not recognize that there was a 104-week waiting period for this pay increase.

Prior waiver decisions have established “the general rule that an employee is expected to know the required waiting periods between within-grade increases and to inquire about increases that do not conform to those waiting periods.”¹¹ Although there are exceptions to the general rule, such as newness to the federal pay structure or lack of specialized knowledge about step increases, none of those exceptions are present here. Respondent is an employee who indicates experience with past step increases. Here, the issue is the ordinary 104-week waiting period for an increase from GS-14, Step 4 to GS-14, Step 5. The general rule applies and Respondent should have known the premature step increase constituted an erroneous overpayment of salary.

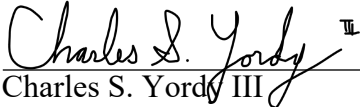
Failure to satisfy the fault standard is sufficient grounds to deny Respondent’s waiver request. However, I also note that Respondent would not qualify for a waiver due to failure to meet the equity standard. Even after showing that he or she did not and should not have known of the accrual of an overpayment, an employee must repay a valid debt unless doing so would be inequitable.¹² Respondent has not presented any evidence weighing in favor of finding that repayment of the debt would be inequitable. In past cases, waiver officials have held, “[t]here 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.”¹³ Respondent does not demonstrate why payment of the cited amounts would be inequitable, nor does the record clearly show it.

Because Respondent has failed to satisfy both standards, Respondent’s request for a waiver is denied. This decision constitutes a final agency action. Respondent may file a request for a pre-offset hearing within 10 days of receiving this decision.¹⁴

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 10961558222 is **HEREBY DENIED**.

So ordered this 7th day of June 2021.



Charles S. Yordy III
Waiver Official

¹⁰ Waiver Request at 1.

¹¹ *In re Taisha*, Dkt. No. 11-77-WA, U.S. Dep’t of Educ. (Jan. 12, 2012) at 4.

¹² *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

¹³ *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).

¹⁴ 34 C.F.R. § 32.6(b) (“An employee who has requested a waiver under § 32.4(b) may request a hearing within 10 days of receipt of a determination by the Secretary denying a waiver.”).