



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the matter of

RK,

Docket No. 21-18-WA

Salary Overpayment
Waiver Matter

Debt ID: M211900003

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent, a U.S. Department of Education employee, has filed an overpayment waiver request seeking a waiver of a \$5,202.86 debt identified by Debt ID M211900003. The overpayment in question occurred due to the Department failing to assign the correct Federal Employee Retirement System (FERS) code to Respondent upon transferring from a different agency.¹

With the waiver request, Respondent included a narrative explanation of the debt, the debt letter Respondent received, and a copy of an SF-50 personnel form. 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 a correction processed by the payroll office” for 7 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 code “FERS RETIREMENT - DEDUCTION.” In the waiver request, Respondent demonstrates an additional understanding of the nature of the debt. Respondent states that, upon transferring from a different agency, the HR specialist did not assign the correct FERS code to the Respondent.

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 primarily focused 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 that the overpayment “was of no fault of mine.”¹⁰ Employees are generally not expected to have the specialized knowledge necessary to recognize an error in coding for retirement deductions.¹¹ That rule applies here and I conclude that Respondent meets the fault standard.

³ 34 C.F.R. § 32.3.

⁴ *Id.* § 32.3(a).

⁵ *Id.* § 32.3(g).

⁶ Letter dated Apr. 19, 2021, from Interior Business Center to Respondent at unpag. 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.*

¹⁰ Waiver Request at 1.

¹¹ *In re K*, Dkt. No. 16-5-WA, U.S. Dep’t of Educ. (May 11, 2017) at 4 (citing *In re Joseph*, Dkt. No. 08-06-WA, U.S. Dep’t of Educ. (Aug. 4, 2009), *In re T*, Dkt. No. 13-40-WA, U.S. Dep’t of Educ. (Dec. 5, 2013), *In re K*, Dkt. No. 15-40-WA, U.S. Dep’t of Educ. (Jul. 24, 2015), *In re A*, Dkt. No. 15-43-WA, U.S. Dep’t of Educ. (Sept. 4, 2015)); *In re J*, Dkt. No. 16-27-WA, U.S. Dep’t of Educ. (Jul. 29, 2016) at 6.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.¹² 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.¹³ The general rule requires the employee to repay the debt unless doing so would be inequitable.¹⁴ The nature of the debt is not punitive; the debt 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. Respondent asserts that repayment of the debt "places a hardship on my family."¹⁵ Respondent also asserts that the HR error in this case has cost Respondent "an uncalculated amount of interest towards my retirement."¹⁶

In past cases, the mere assertion of financial hardship without sufficient supporting evidence was insufficient to demonstrate that repayment of a debt would be inequitable.¹⁷ In this case, Respondent has provided no evidence that repayment of the debt is so burdensome as to be inequitable. Furthermore, Respondent has not shown how the error by HR negatively affected Respondent's retirement savings. The erroneous coding affected Respondent's FERS deductions and Respondent's FERS pension will be calculated upon retirement based on years of service. The HR error in this case does not appear to have any effect on contributions to the Thrift Savings Plan, which could have resulted in missed growth.

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."¹⁸ Respondent does not demonstrate why payment of the cited amounts would be 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. Respondent may file a request for a pre-offset hearing within 10 days of receiving this decision.¹⁹

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

¹³ *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).

¹⁴ *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

¹⁵ Waiver Request at 1.

¹⁶ *Id.*

¹⁷ *In re RB*, Dkt. No. 16-36-WA, U.S. Dep't of Educ. (Sept. 16, 2016) at 3.

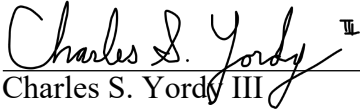
¹⁸ *In re E*, Dkt. No. 15-07-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep't of Educ. (July 11, 2012) at 9).

¹⁹ 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.").

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 M211900003 is **HEREBY DENIED**.

So ordered this 8th day of June 2021.



Charles S. Yordy III
Waiver Official