



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS  
400 MARYLAND AVENUE, S.W.  
WASHINGTON, D.C. 20202

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In the Matter of

CG,

Respondent.

**Docket No. 19-28-WA**

Waiver Proceeding

Debt ID: 91270783970

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**DECISION DENYING WAIVER**

This proceeding concerns whether Respondent, a U.S. Department of Education (Department) employee should be granted a waiver of a salary overpayment debt in the amount of \$1,606.40. This overpayment arose from the Department's erroneous processing of the 2019 pay adjustment to all members of his working group at the Department. While Respondent's pay adjustment should have been processed effective March 3, 2019; the Department initially processed it with an effective date of January 6, 2019. Reversal of this error resulted in the overpayment at issue in this case. Based on my review, I find that waiver of this debt is not warranted. Accordingly, Respondent's request for a waiver is denied.

JURISDICTION

Under 5 U.S.C. § 5584 (the Waiver Statute), the Department has the authority to waive claims of the United States against debtors as a result of an erroneous payment of pay to a federal employee.<sup>1</sup> The Department promulgated regulations at 34 C.F.R. Part 32 (§ 32.1 *seq.*) and its *Handbook for Processing Salary Overpayments* (Handbook, ACS-OM-04), specifically delegated the exercise of the Secretary's waiver authority for salary overpayments to the Office of Hearings and Appeals (OHA). The undersigned is the authorized Waiver Official who has been assigned this matter by OHA.

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<sup>1</sup> See General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), October 19, 1996, 110 Stat. 3828; see also *In re Tanya*, Dkt. No. 05-34-WA, U.S. Dep't of Educ. (April 18, 2006) at 1, note 1.

## DISCUSSION

### Facts of the Case

According to the Notice of Debt Letter and Bill of Collection, Respondent's 2019 pay adjustment was erroneously made effective on January 6, 2019, when it should have been made effective on March 9, 2016. This error resulted in the aforementioned overpayment.

Respondent states that the overpayment came as a surprise to him. Respondent asserts that in reviewing his leave and earnings statements for the first five pay periods of 2019, his net pay dropped slightly between the first pay period and the subsequent four pay periods, which he assumed was attributable to tax withholding adjustments. Then, Respondent received a pay increase in the fifth pay period, which did not result in rise in his net pay. Respondent also states that he did not increase any employee contributions which might have resulted in a reduction of his net pay. Consequently, Respondent asserts that he had no reason to believe that I was overpaid, especially since his net pay dropped at the beginning of the year. Respondent states that he is requesting a waiver because he does not believe this is fair or equitable.

### Analysis

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>2</sup> Among other things, that notice must explain the "origin, nature and amount of the overpayment."<sup>3</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>4</sup> The May 6, 2019 Notice of Debt Letter identified the amount of the debt and established the pay periods in which this overpayment occurred. In subsequent filings to the tribunal, including his waiver request and documents submitted in support of his request, Respondent demonstrated an understanding of the nature of the debt. Accordingly, I conclude Respondent had sufficient notice of the debt to file a waiver request. Next, I will proceed with an analysis of Respondent's request.

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>5</sup>

First, regarding the fault standard, Respondent argues that the debt came as a surprise and that he had no way of knowing that an erroneous payment of salary had occurred. There is no indication that Respondent knew or should have known that the 2019 pay adjustment was processed erroneously. An April 30, 2019, email from the Department to all the members of Respondent's work group indicates that 2019 pay adjustments "were initiated for retroactive pay

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<sup>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> 34 C.F.R. § 32.3(a).

<sup>4</sup> 34 C.F.R. § 32.3(g).

<sup>5</sup> 5 U.S.C. § 5584(a) (2012); *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005) at 3, 5.

to January 6, 2019, however the retroactive pay should have been effective as of March 3, 2019." There is no indication in the accompanying explanation of the debt from the Department that Respondent knew or should have known that the pay adjustment was processed erroneously prior to the receipt of that April 30, 2019, email. Furthermore, there is no information in the file to indicate that Respondent knew or should have known that the correct date for the pay adjustment was March 3rd instead of January 6th. Based on the evidence presented and the circumstances described above, I conclude that Respondent meets the fault standard.

Second, I turn to the equity standard. To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.<sup>6</sup> Beyond this framework, there are not rigid rules governing the application of the equity and good conscience standard. Clearly the overpayment in this case is the result of the Department's administrative error, but the general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>7</sup> 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>8</sup>

In this case, Respondent does not present any argument or evidence weighing in favor of any of the factors cited above. Respondent merely states that he doesn't believe this is fair or equitable. Respondent does not demonstrate why repayment would be inequitable, nor does the record clearly show it. In the absence of such a showing, Respondent does not satisfy the equity standard. Accordingly, Respondent's request for a waiver is denied. This decision constitutes a final agency action.

### 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 91270841939 is **DENIED**.

So ordered this 22<sup>nd</sup> day of July 2021.

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Greer Armandroff  
Waiver Official

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<sup>6</sup> See 5 U.S.C. § 5584 and *In re Anh-Chau*, Dkt. No. 05-01-WA, U.S. Dep't of Educ. (June 17, 2005).

<sup>7</sup> See *In the Matter of R*, Dkt. No. 14-54-WA, U.S. Dep't of Educ. (Jan. 12, 2015) at 4 (citing *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep't of Educ. (Oct. 24, 2013) at 6; *In re Sarah*, 11-07-WA, Dkt. No. 11-07-WA, U.S. Dep't of Educ. (May 5, 2011) at 2-3).

<sup>8</sup> *In re David*, Dkt. No. 05-22-WA