



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

DW,

Respondent.

Docket No. 20-35-WG

Administrative Wage Garnishment
Proceeding

Treasury Case No.: L24241113

Department Account No.: CRS-RSA-18-126

Appearances: [redacted], Respondent, self represented.

Renu Kapur, Office of Finance and Operations, Office of Financial Management, Accounts Receivable and Bank Management Division, for the U.S. Department of Education.

Before: Robert G. Layton, Administrative Law Judge

DECISION

This appeal involves a request for a hearing filed with the United States Department of Treasury (Treasury), Bureau of the Fiscal Service (BFS). Respondent filed the request in response to a June 2, 2020 Notice of Intent to Initiate a Wage Garnishment Proceeding (Notice). Respondent's request was dated June 21, 2020.¹ The tribunal received Respondent's request for a hearing and other documentation from the U.S. Department of Education's Office of Finance and Operations, Office of Financial Management (OFM) that was then forwarded to the tribunal.

¹ See Request for Hearing dated June 21, 2020, p. 8-9.

Treasury's BFS, on behalf of the Department asserted its right to initiate administrative wage garnishment proceedings pursuant to 31 U.S.C. § 3720D and 31 C.F.R. § 285.11. The alleged debt stems from Respondent's failure to complete a service requirement for a scholarship he received from the Department's Rehabilitation Services Administration (RSA).²

On August 6, 2020, I issued an Order Governing Proceedings. In my August 6, 2020 Order, both Respondent and the Department were required to submit a Notice of Appearance. On August 8, 2020, the Department submitted documents and supporting materials regarding the alleged debt including previous correspondence regarding waiver requests submitted by Respondent and responded to by RSA. The Department also submitted its Notice of Appearance on September 10, 2020. Respondent did not submit a Notice of Appearance on behalf of himself or his counsel nor did he file any additional statement or supporting documentation.³

Respondent's hearing request concerns a debt for which the Department seeks to collect by administrative wage garnishment. Respondent's debt is \$10,546.46. Respondent requested a hearing on three grounds: 1) the debt was not owed; (2) the proposed garnishment would cause a financial hardship; and (3) the debt is ineligible for garnishment because Respondent was involuntarily terminated from his last job and has been employed in his current job less than 12 months.

ISSUES

The issues to be resolved in this decision are:

- 1. Has the Department met its burden of proof to establish the existence and amount of the debt identified in the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 2, 2020?**

² RSA is a component of the Department's Office for Special Education and Rehabilitation Services (OSERS).

³ In his handwritten request for a hearing, Respondent indicates he is seeking counsel to represent him in this matter. However, neither Respondent nor anyone purporting to be Respondent's counsel ever filed an appearance with the tribunal.

2. **If the Department has met its burden of proof, has the Department established that the debt is delinquent?**
3. **Has the Respondent established that the proposed garnishment would cause financial hardship?**
4. **Has the Respondent established that he is ineligible for wage garnishment because he was involuntarily terminated from his last job and employed in his current job for less than 12 months?**

SUMMARY OF DECISION

The Department has met its burden of proof establishing the existence and amount of the debt identified in the June 2, 2020 Notice. The Department has also established that the debt identified in the Notice in the amount of \$10,546.46 is delinquent. Respondent has failed to demonstrate that the proposed garnishment would cause financial hardship. Respondent also has failed to establish that he/the debt is ineligible for garnishment because he was involuntarily terminated from his last job and employed in his current job for less than 12 months.

FINDINGS OF FACT

I. PROCESS BEFORE OHA

In a request for hearing dated June 21, 2020, Respondent submitted a request to the U.S. Department of Treasury challenging the June 2, 2020 Notice of Intent to Initiate an Administrative Wage Garnishment (Notice). Respondent's request contained a copy of the Notice as well as a form for which a debtor may select the bases on which the garnishment is being challenged. On the form, Respondent challenged the Notice on the bases that he (1) did not owe the debt; (2) proposed garnishment would cause financial hardship; and (3) his debt was ineligible for garnishment because he was involuntarily terminated from his last job and only

employed in his current job for less than 12 months. Respondent attached a statement to his request which stated that he should not have to repay the scholarship because he was forced out of Northeastern Illinois University (NEIU) unlawfully due to racial bias. Respondent argues that he is underemployed due to his inability to complete his educational program at NEIU and would be in favor of going back to finish his degree. Respondent also submitted a letter dated February 25, 2020 indicating his employment at a security company ended as of that date.

The Department submitted signed copies of the Scholarship Agreement and the RSA Payback Manual Receipt. The Department also submitted two letters from RSA concerning Respondent's previous requests for a waiver to repay his scholarship. The first letter from RSA is dated April 25, 2018 letter and was sent in response to Respondent's April 11, 2018 request submitted to the Department's Office of the Chief Financial Officer. In their April 25, 2018 letter, RSA stated that it reviewed Respondent's claim that he was dismissed from NEIU due to racism and the supporting documentation. RSA stated that based on the review of the documents submitted, Respondent was dismissed from the program due to allegations of plagiarism and not racism. RSA's April 25, 2018 letter notes that Respondent has been unable to secure qualifying employment between July 15, 2011 and July 15, 2013 to satisfy the RSA's scholarship's service requirement. RSA also noted Respondent and NEIU signed and dated a scholarship agreement on November 7, 2008. The record also reflects that there was a RSA Payback Manual Receipt Certification signed and dated by Respondent and NEIU on November 12, 2008. RSA also sent a second letter dated December 16, 2019 letter in response to the October 31, 2019 correspondence to Treasury's Debt Management Service concerning the repayment of the RSA scholarship. In that October 31, 2019 correspondence, Respondent disputed owing the scholarship funds because he was not allowed to complete the program due to racism and unfair findings. RSA's

December 16, 2019 letter affirmed its April 25, 2018 decision that Respondent was responsible for repayment of the RSA scholarship received. However, the Department corrected the amount owed down from \$9,222 plus costs to \$6,764.20 plus costs because Respondent did not receive the entirety of the scholarship funds NEIU first reported to the Department. The current debt amount of \$10,546.46 contained in the Notice is this reduced amount plus costs.

In an August 6, 2020 Order Governing Proceedings, the Respondent was ordered to review the record received by the tribunal and contained in the tribunal's e-filing system known as OES and enter a Notice of Appearance by August 17, 2020. Respondent also was ordered to file a short brief or written statement supplementing the initial appeal request and the basis for alleging the proposed garnishment would cause financial hardship. Respondent was to submit a signed financial statement along with copies of earnings records, income records and proof of stated expenses. The August 6, 2020 Order noted that failure to submit the financial information required may result in the finding that Respondent has not established the financial hardship.

PRINCIPLES OF LAW

In this proceeding, the Department must establish the existence and amount of the debt as well as demonstrate that the debt is delinquent. Under 31 U.S.C. § 3720D, the Department may garnish the disposable pay of an individual to collect the amount owed, if the individual is not making required repayment in accordance with any agreement between the Department and the individual. The statute provides for an opportunity for a hearing on the existence or the amount of the debt and to establish that imposition of the wage garnishment would cause financial hardship.⁴

The regulatory procedures for collecting a delinquent nontax owed to the Department

⁴ 31 U.S.C. § 3720D(b)(5)(A) and (B).

through wage garnishment are contained in 31 C.F.R. § 285.11. The Department may initiate proceedings to administratively garnish the wages of the delinquent debtor.⁵ As an initial matter, the Department must provide proper notice and an opportunity for a hearing.⁶ The Department also bears the burden of proving the existence or amount of the debt. Once the Department has met its burden, the debtor must prove by a preponderance of evidence that no debt exists or that the amount is not correct.⁷ The debtor may also challenge the garnishment on two bases for which the validity of the debt is not at issue. First, the debtor may present evidence that the collection of the debt would cause financial hardship, the terms of the repayment are unlawful or the collection of the debt may not be pursued due to operation of law.⁸ The Department prescribed its own regulations for the conduct of administrative wage garnishment hearing, which may be found at 34 C.F.R. Part 34.⁹ Under the Department's hearing procedures, provide that the Department has met its burden of proof by including in the record and making available to the debtor on request, records that show the debt exists in the amount indicated in the notice, and payment of the debt is delinquent.¹⁰

RSA administers scholarships for rehabilitation training programs which may give rise to a nontax debt if the conditions for receipt of the scholarship is not met.¹¹ The program that gave rise to the debt at issue in this proceeding is the Rehabilitation Long-Term Training Program.¹² Under this program, institutions of higher education are eligible to receive financial assistance

⁵ 31 C.F.R. § 285.11(d).

⁶ 31 C.F.R. § 285.11(e) and (f).

⁷ 31 C.F.R. § 285.11(f)(8)(i).

⁸ 31 C.F.R. § 285.11(f)(8)(ii).

⁹ An agency may adopt the procedures contained in 31 C.F.R. § 285.11(f), which may be applied government-wide or it may promulgate its own regulatory procedures. The Department chose the latter.

¹⁰ 34 C.F.R. § 34.14(a)(1) and (2).

¹¹ *See generally*, 34 C.F.R. Part 385.

¹² *See* 34 C.F.R. Part 386.

awards.¹³ The institutions then are required to use a designated portion of the funds for scholarships and must meet specified requirements prior to the disbursement of these scholarships.¹⁴

Each recipient institution must meet certain requirements when it intends to provide scholarships.¹⁵ Specifically, the institution must obtain a written agreement including the applicable terms and conditions related to the receipt of the scholarship funds and the agreement must be signed by the student recipient prior to the disbursement of the scholarship funds.¹⁶ The institution must maintain standards for tracking satisfactory academic progress of a recipient scholar as well maintain a tracking system to determine the recipient's compliance with the service obligation for the length of the time required to fulfill the recipient's service obligation and provide reports to the Secretary as needed.¹⁷ The institution also must establish policies and procedures for receiving written certification from recipients at the time they exit the educational program.¹⁸ The written certification must acknowledge the name of the institution, the number of the Federal grant that provided the scholarship, the scholar's field of study, the number of years the recipient needs to work to satisfy the work requirement and all other obligations of the scholarship.¹⁹

ANALYSIS

DEPARTMENT'S BURDEN OF PROOF

In a wage garnishment proceeding, the Department has the burden of proving the

¹³ 34 C.F.R. § 386.1, 386.2, and 385.2.

¹⁴ 34 C.F.R. §§ 386.31 and 386.33.

¹⁵ 34 C.F.R. § 386.34.

¹⁶ 34 C.F.R. § 386.34(a) – (c).

¹⁷ 34 C.F.R. § 386.34(g) – (i).

¹⁸ 34 C.F.R. § 386.34(f).

¹⁹ 34 C.F.R. § 386.34(f)(1) – (6).

existence and the amount of the debt.²⁰ A debtor may challenge the existence of the asserted debt, challenge the amount of the debt, challenge the garnishment amount or any combination of these options.

Here, the Department has submitted a copy of the Scholarship Agreement signed and dated by Respondent and the recipient institution as well as the RSA Payback Manual Receipt Certification. It is not disputed that Respondent was removed from NEIU's program and consequently was not able to complete the service requirement mandated by the scholarship agreement. RSA previously reviewed his claims of discrimination in a request for waiver of the debt and the basis for Respondent being dismissed from NEIU cannot be re-litigated in this forum. This tribunal only has jurisdiction to review the challenge to the imposition of an administrative wage garnishment. RSA conducted a review and found no evidence to support Respondent's claim of racial bias, finding that NEIU's asserted basis for Respondent's expulsion was plagiarism. Why the Respondent was dismissed from his educational program is not a factor in determining whether Respondent owes a debt to his failure to complete the service component of his RSA scholarship.

Typically, an institution must also provide a written certification where the student once again acknowledges the debt and the post-graduate service requirement. Although there is no evidence in the record of a written certification from the debtor upon completing the program as required by 34 C.F.R. § 386.34, the absence of this document is reasonable given the unfortunate circumstances surrounding Respondent's departure from the program. The record reflects that Respondent was aware of the debt incurred by failing to complete his program and the subsequent service requirement as evidenced by his prior requests for waiver of the debt prior to

²⁰ 31 C.F.R. § 285.119(f)(8)(i) and 34 C.F.R. § 34.14.

the issuance of the Notice. Consequently, Respondent is responsible – as delineated under the agreement and by regulation – to repay the scholarship funds received. As the Department has established that a debt exists, it is now incumbent upon Respondent to demonstrate that collection of the debt would result in financial hardship and/or that the debt cannot be collected at this time due to the debtor being employed for less than 12 months at his current place of employment.

RESPONDENT'S EVIDENTIARY BURDEN NOT MET

The debtor bears the burden in this proceeding to demonstrate that collection would be a financial hardship and that the debt cannot be collected because he has been employed at his current place of employment for less than 12 months. Respondent did not submit any financial statement supporting his claim of financial hardship. Both the form Respondent submitted and the OGP issued by the tribunal advised Respondent that failure to submit a financial statement and documentation may result in the rejection of his claim due to his failure to demonstrate financial hardship. That is the case here. Without any documentation of Respondent's financial status, it is impossible for the tribunal to find the respondent has proven the claim of financial hardship. Merely asserting financial hardship does not meet that burden. Additionally, Respondent opted also to challenge the garnishment because he was employed by his current employer for less than 12 months. Respondent states that he is underemployed due to his failure to complete his program of study at NEIU. To support his claim, Respondent did submit a document showing that his employment with a security company ended but no documentation that he was currently employed elsewhere for less than 12 months prior to the issuance of the Notice. The only other reference is that in his request he states that he is currently "underemployed". Those two facts are not enough for the Respondent to meet his burden here as

well. He merely asserts that repayment would be a hardship. The mere assertion of financial hardship or employment at a current employer for less than 12 months is not sufficient to demonstrate that either of these two bases to stop or modify an impending wage garnishment are met.

CONCLUSIONS OF LAW

- 1. The Department met its burden of proof in establishing the existence and amount of the debt identified in the June 2, 2020 Notice of Intent to Initiate Administrative Wage Garnishment.**
- 2. The Department met its burden of proof in establishing that the debt is delinquent.**
- 3. Respondent has not met his burden of proof that collection of the debt would cause financial hardship.**
- 4. Respondent has not met his burden of proof that collection of the debt is not allowed due to being employed at his current place of employment for less than 12 months.**

ORDER

In accordance with 32 U.S.C. §3720D and 31 C.F.R. § 285.11, the Respondent's debt is the amount of \$10,546.46 may be garnished.

Robert G. Layton
Administrative Law Judge

Dated: July 9, 2021