



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

DA,

Docket No. 21-20-WA

Salary Overpayment
Waiver Matter

Debt ID: M2112000001

Respondent.

DECISION GRANTING WAIVER REQUEST

Respondent, a U.S. Department of Education employee, has filed an overpayment waiver request seeking a waiver of a \$13,019.87 debt identified by Debt ID M2112000001. The overpayment in question occurred due to the Department failing to assign the correct Federal Employee Retirement System (FERS) code to Respondent when Respondent first entered federal employment.¹

With the waiver request, Respondent included a narrative explanation of the debt, the debt letter Respondent received, and copies of emails and leave and earnings statements relevant to the time period when the debt accrued. 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 met 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 9 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 entering into federal employment for the first time with the Department, the HR specialist did not assign the correct FERS code to the Respondent. The debt letter appears to be erroneous in that it lists only the last pay period for calendar years 2016, 2017, 2018, 2019, and 2020, with the amount listed for each of those years in the thousands of dollars. The four additional pay periods, 202101 through 202104, appear to show correct FERS deductions of less than \$200 per pay period. Though the debt letter lacks clarity, I infer that the larger amounts are aggregated totals of all FERS deductions that should have occurred in each cited calendar year.

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. Respondent persuasively argues that an error in coding for FERS deductions that appeared in every pay period when Respondent was a federal employee would be difficult for Respondent to detect. In fact, a sworn statement by the Respondent’s Executive Officer supports the assertion that Respondent neither knew nor should have known of the overpayment. Employees are generally not expected to have the specialized

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 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.*

knowledge necessary to recognize an error in coding for retirement deductions.¹⁰ That rule applies here and I conclude that Respondent meets the fault standard.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.¹¹ 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.¹² The general rule requires the employee to repay the debt unless doing so would be inequitable.¹³ 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 a past case, *In re M*, a waiver official held that a \$15,000 debt was de facto "substantial."¹⁴ Furthermore, in that case the Department's negligence in allowing four years to elapse before conducting an inquiry and attempting to recover the overpayment weighed in favor of finding repayment inequitable.¹⁵ In this case, the total amount of Respondent's debt is likewise substantial, comprising more than 10% of Respondent's gross yearly salary. Furthermore, the debt reached this significant sum because of the Department's delay of over four years in uncovering its own error. I find these circumstances analogous to *In re M* where repayment was found to be inequitable. Accordingly, repayment in this case would be inequitable and Respondent has satisfied the equity standard.

Because Respondent has satisfied both the fault and equity standards, I grant the requested 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 M2112000001 is **HEREBY GRANTED**.

So ordered this 1st day of July 2021.

Charles S. Yordy III
Waiver Official

¹⁰ *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.

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

¹² *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).

¹³ *In re Sarah*, Dkt. No. 11-07-WA at 2-3.

¹⁴ *In re M*, Dkt. No. 16-30-WA, U.S. Dep't of Educ. (Oct. 14, 2016) at 6.

¹⁵ *Id.* at 6-7.