



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4615
TELEPHONE (202) 245-8300

In the Matter of

Docket No.: 21-29-OF

JP,

Overpayment/Pre-offset Hearing

Respondent.

Debt ID: 11661807891

Appearances: Brittany Coleman, Union Representative, on behalf of Respondent¹

Lydia Makande, General Attorney, Office of the General Counsel, U.S.
Department of Education, Washington, D.C., for U.S. Department of Education

Before: Elizabeth Figueroa, Administrative Law Judge

DECISION

I. Summary of this Decision

The Department has established that the \$4,228.90 salary overpayment it seeks in its June 14, 2021 Notice of Debt Letter is a valid debt owed by Respondent and that Respondent is liable for the debt.

¹ Respondent represented herself until September 20, 2021, when Ms. Coleman entered her appearance.

II. Procedural History

On July 8, 2021, the Office of Hearings and Appeals (OHA) received a request for a pre-offset hearing filed by Respondent, an employee of the U.S. Department of Education (the Department) in relation to an overpayment in the net amount of \$4,228.90.² In her request for a hearing, Respondent challenges the Department's claim that the debt resulting from the overpayment is valid because parental leave she took was covered by sick leave, annual leave, and donated leave. She further explained that there was some difficulty getting the donated leave applied to her account for several pay periods and that she submitted corrected time sheets after she returned to work to ensure the donated leave was fully used.³

On July 13, 2021, I issued an Order Governing Proceeding, setting deadlines by which the parties were to file documents and statements in support of their positions concerning the debt. On July 19, 2021, Respondent filed a statement in response to the Order Governing Proceeding. On July 30, 2021, the Department filed a Motion for Extension of Time, asking that the August 3, 2021 deadline for filing its brief be extended by 30 days to allow time for payroll records to be corrected and the debt at issue to be cleared and also asking that it be allowed to file a status report in 30 days. On August 3, 2021, the Department filed its brief and exhibits.

On August 6, 2021, I issued an Order denying as moot the Department's Motion for Extension of Time, the Department having filed its brief on August 3, 2021. In the Order, I allowed the Department until August 30, 2021 to file a status report concerning correction of

² Under 34 C.F.R. § 32.6(a), an employee must file a request for hearing to challenge a pre-offset debt within 15 days of receipt of written notice. On this record, it is not clear whether Respondent filed the hearing request within 15 days of her receipt of the Notice of Debt Letter, but only that the notice was issued on June 14, 2021, based on the date contained in the notice. In the Statement Respondent filed on September 14, 2021, Respondent stated only that the notice was not sent to her by certified mail and that return receipt was not requested, but did not address when she received the notice. Nor does the notice contained all information required by 34 C.F.R. § 32.3. Notice of Debt Letter filed July 8, 2021. Notwithstanding the issues concerning satisfaction of the 15-day timeliness requirement and any deficiencies in the contents of the notice, I have determined that Respondent's request for a hearing was timely filed for other reasons. The Notice of Debt Letter issued to Respondent on June 14, 2021 stated that Respondent had 30 days to dispute the debt. Respondent's Request for a Pre-Offset Hearing was filed in accordance with the instructions contained in the Notice of Debt Letter and therefore timely filed pursuant to 34 C.F.R. § 32.6(a).

³ Respondent also filed a waiver request regarding this debt. The waiver request was docketed as OHA Docket No. 21-30-WA. On July 14, 2021, the Waiver Official issued an Order Staying Proceeding and Collections, staying the waiver case until a final decision in this pre-offset hearing case is rendered.

payroll records and whether the debt had been cleared. On August 27, 2021, the Department filed a Status Report, in which it explained that the debt has not been cleared but remains due and owing.

Because the Department's Status Report contained new statements and exhibits, on September 1, 2021, I issued an Order allowing Respondent until September 15, 2021, to file a response to the Department's brief and Status Report.

On September 14, 2021, Respondent filed a response to the Department's brief and Status Report and on September 15, 2021, Respondent, through her representative, filed an Affidavit in Support of Waiver.⁴

III. The Parties' Arguments

A. Respondent's Argument

Respondent challenges the existence of the debt on the basis that it is not valid. In her hearing request, Respondent states that she was on parental leave from September 20, 2020 through December 18, 2020, and that her leave was covered by advanced sick leave, accrued sick or annual leave, and donated leave. Respondent initially argued that the debt at issue arose because advanced leave requests were incorrectly coded in the Web TA system and that her submission of corrected time sheets and application of properly coded advanced leave should have resolved the debt. Upon the Department's clarification that the debt remains due and owing because the Department paid Respondent twice for the same sick leave, Respondent argues that she should not be liable for the debt because it occurred through no fault of her own, but through Department error.⁵

⁴ As explained in FN 2 above, Respondent also filed a request for waiver, which has been docketed as OHA Docket No. 21-30-WA. The case involving the waiver request has been stayed until a final decision in this pre-offset hearing case is rendered. The Affidavit in Support of Waiver that was filed in this case addresses waiver of the debt at issue in this case. It appears that Respondent may have meant to file the Affidavit in Support of Waiver in OHA Docket No. 21-30-WA, rather than in this case. If so, Respondent should file the Affidavit of Support of Waiver promptly in the waiver case, OHA Docket No. 21-30-WA, to ensure the Waiver Official has it before him to consider.

⁵ Respondent's request for hearing was based on the Notice of Debt Letter concerning the overpayment triggered by the incorrectly coded time sheets submitted for pay periods 2020-25 and 2020-26, not the duplicate payment for advanced sick leave made to Respondent in pay period 2021-15, which now serves as the basis for the Department's overpayment claim. Nonetheless, I have addressed the overpayment claim resulting from the duplicate payment made in pay period 2021-15 as both parties have had an opportunity to be heard concerning the duplicate payment and resulting overpayment. Additionally, the

B. Department's Argument

The Department argues the overpayment is a valid debt. In support of its argument, the Department states that the Notice of Debt Letter was issued when incorrectly coded time sheets were submitted for pay periods 2020-25 and 2020-26, and that although corrected time sheets were processed to reflect Respondent's use of advanced leave, the debt remains due and owing because the Department paid Respondent a second time for the same advanced sick leave during a later pay period, 2021-15, which ended July 17, 2021.⁶

IV. Findings of Fact

Respondent is an employee of the U.S. Department of Education, where she has been employed since August 16, 2020.⁷ Respondent currently serves as a General Attorney in the Department's Office of Civil Rights (OCR) in the Denver Regional Office.⁸

Respondent was on parental leave from September 20 through December 18, 2020.⁹ Because Respondent had not accrued sufficient annual or sick leave to cover the parental leave time, she applied and was approved for advanced sick leave to cover a portion of the time she was on parental leave.¹⁰

When Respondent's time sheets were submitted for pay periods 2020-25 and 2020-26, the sick leave she took was initially incorrectly coded "03F," when it should have been coded "030."¹¹ Code 03F applies to sick leave advanced through the leave share program and code 030 applies to advanced sick leave.¹² Respondent's participation in the leave share program terminated on November 21, 2020, so she was not eligible for leave through the leave share program during pay periods 2020-25 and 2020-26.¹³ Respondent was paid base on the timesheets she submitted, but because she was not participating in the leave share program

duplicate payment made during pay period 2021-15 is closely related to the initial overpayment generated by the incorrectly coded time sheets submitted for pay periods 2020-25 and 2020-26.

⁶ Agency Status Report at 2.

⁷ Agency's Brief in Support of Debt Determination, Exhibit (Ex.) ED-01.

⁸ *Id.*

⁹ Respondent's Request for Hearing filed July 8, 2021.

¹⁰ *Id.*

¹¹ Respondent's statement filed July 19, 2021; Agency's Brief in Support of Debt Determination, Ex. ED-02 at 1.

¹² Agency's Brief in Support of Debt Determination, Ex. ED-02 at 1.

¹³ *Id.*

during pay periods 2020-25 and 2020-26, the timekeeping system rejected the sick leave time Respondent claimed under the 03F code and automatically coded the time reported as leave without pay.¹⁴

By Notice of Debt Letter dated June 14, 2021 (Notice), the Department of Interior informed Respondent that she owes a debt in the amount of \$4,228.90 to the Department for an overpayment. The Notice stated that the overpayment was a result of a time sheet correction processed by Respondent's agency for pay period(s) 2020-25, 2020-26.¹⁵

Respondent worked with her supervisor to correct the payroll coding error by submitting a request that the leave code for the improperly coded leave be processed using the correct payroll code.¹⁶ The error was resolved.¹⁷ As a result of resolution of the error, Reissued Leave and Earnings Statements were issued, correctly reflecting Respondent's use of advanced sick leave as well as 4 hours of accrued annual leave and 4 hours of accrued sick leave for pay periods 2020-25 and 2020-26.¹⁸

However, after the payroll coding error was resolved, the Interior Business Center at the U.S. Department of Interior, the Department's payroll agent, unaware that the re-coding of leave was to account for leave already paid out, paid Respondent for the same advanced sick leave in pay period, 2021-15, which pay period ended July 17, 2021, in error.¹⁹ Thus, the overpayment to Respondent and the resulting debt for the \$4,228.90 has not been resolved.²⁰

V. Issue Presented

Has the Department established that it overpaid \$4,228.90 to Respondent and that the overpayment is a valid debt owed by Respondent?

VI. Conclusions of Law

¹⁴ *Id.*, Ex. ED-03 at 3.

¹⁵ Notice of Debt Letter filed July 8, 2021.

¹⁶ Respondent's Affidavit in Support of Waiver filed September 15, 2021.

¹⁷ *Id.*; Agency's Status Report, Exs. ED-01 at 1- 2, ED-02 at 1-2.

¹⁸ Agency's Status Report, Ex. ED-02.

¹⁹ Agency's Status Report, Exs. ED-01 at 3, ED-02 at 1-4.

²⁰ The debt the Department seeks to recover reflects 135 hours of time. The correction made in error that resulted in a second payment to Respondent was for 139 hours. Agency's Status Report, Ex. ED-01 at 3. The difference works in Respondent's favor.

The standard of review for assessing the validity of a salary overpayment debt is whether the existence and amount of the overpayment is clearly erroneous.²¹ A determination is clearly erroneous if, although there is evidence to support the determination, the hearing official, considering the record as a whole, is left with a definite and firm conviction that a mistake was made.²²

The basis for the Department's overpayment claim in this case is a duplicate payment made to Respondent for advanced sick leave and the resulting overpayment.

Respondent was on parental leave from September 20 through December 18, 2020.

To be eligible for paid parental leave, a Federal employee must have completed at least twelve (12) months of Federal service and be taking leave to care for their child born on or after October 1, 2020.²³ Because Respondent had been employed with the Federal government for less than twelve months at the time of her parental leave, she was not eligible for paid parental leave. *Id.*

Nor was Respondent eligible for sick leave through the leave share program as her participation in the leave share program terminated on November 21, 2020.

Thus, Respondent's eligibility for paid leave during the parental leave period could be covered only through any accrued annual or sick leave, or advanced sick leave. Respondent's accrued annual and sick leave balances were not sufficient to cover the parental leave periods, so she applied for and was granted 140 hours of advanced sick leave.

When Respondent submitted time sheets for pay periods 2020-25, 2020-26, they were incorrectly coded for donated leave, rather than advanced sick leave. Because Respondent was not eligible for donated leave, the automated payroll system generated the overpayment notice that is at issue in this case. Respondent later submitted corrected time sheets for pay periods 2020-25 and 2020-26, correctly coding them for advanced sick leave.

Submission of the correctly code time sheets, however, did not resolve the overpayment claimed by the Department. Rather, Respondent was paid again later for the same advanced sick leave. After the payroll coding effort was resolved, the Department paid Respondent for the same advanced sick leave in pay period 2021-15, in July 2021. Thus, the debt in the amount of

²¹ 34 C.F.R. § 32.9(b).

²² *Id.*

²³ Federal Employee Paid Leave Act (FEPLA) of 2019, Pub. L. 116-92; 5.U.S.C. §§ 6381(1)(B), 6381(d)(1) and (d)(2)(A) and (B); 5 C.F.R. § 630.1201(b)(ii).

\$4,228.90 resulting from the overpayment is valid and has not been resolved.

The Department is required to recover overpayments of pay made to current and former employees, without exception for salary overpayments due to error on the part of the Department.²⁴ However, an employee from whom recovery is sought may seek waiver of collection of the debt.²⁵

VII. Conclusion

The U.S. Department of Education erroneously paid Respondent for the same advanced sick leave twice, first for pay periods 2020-25, 2020-26, when the leave was taken, and again later in pay period 2021-15, when resolution of the coding error resulted in a duplicate payment. The duplicate payment created an overpayment of disposable pay to Respondent in the amount of \$4,228.90. The debt created by the overpayment to Respondent is a valid debt owed to the Department.

VIII. Order

Based on the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED:**

1. The Department has established a valid debt in the amount of \$4,228.90.
2. This decision constitutes a final agency decision; however, Respondent has sought a waiver of the debt pursuant to 34 C.F.R. § 32.4(b).²⁶
3. Collection of this debt continues to be stayed until Respondent's waiver request is resolved.

Elizabeth Figueroa
Administrative Law Judge

Date of Decision: September 22, 2021

²⁴ 5 U.S.C. § 5514; 31 U.S.C. § 3716; 34 C.F.R. Part 32.

²⁵ 34 C.F.R. § 32.4(b).

²⁶ Respondent previously filed a waiver request regarding this debt. The waiver request was docketed as OHA Docket No. 21-30-WA. On July 14, 2021, the Waiver Official issued an Order Staying Proceeding and Collections, staying the waiver case until a final decision in this pre-offset hearing case is rendered.