



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

In the Matter of

KM,

Respondent.

Docket No. 19-74-WA

Waiver Proceeding

Debt ID: 92811340638

DECISION PARTIALLY GRANTING WAIVER¹

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 \$6,928.12. This overpayment arose from the Department's canceling of all leave received by Respondent during Pay Periods 12 through 14 for 2019. Based on my review, I find that a partial waiver of this debt in the amount of \$6,509.96 is warranted. Accordingly, Respondent's request for a waiver is granted in the amount of \$6,509.96 and denied in the amount of \$418.16.

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.² 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.

¹ This decision is a reissuance of the decision issued on September 27, 2021 correcting the Debt ID to Debt ID #: 92811340638. The decision issued on September 27, 2021 is rescinded and replaced with this decision.

² 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

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.³

Facts of the Case

According to the October 7, 2019 Notice of Debt Letter and Bill of Collection, Respondent pay for pay periods 201912, 201913 and 201914 was adjusted because she was paid for leave she either did not have or was not eligible to receive. Specifically, for 201912, Respondent erroneously received .30 hours of annual leave and 20 hours of sick leave; for 201913, Respondent received 6.30 hours of annual leave and 73.30 hours of annual leave; and for 201914, Respondent received 72 hours of annual leave and 8 hours of holiday pay.

In her initial request for waiver and her subsequent statements,⁴ Respondent states that she was granted and approved for advance sick leave and annual leave in the amount of the leave that would accrue during the remainder of the leave year by her direct supervisor and Director while she was out on leave for medical issues during pregnancy and subsequent leave needed to care for the birth of her child. Respondent was out due to this medical emergency starting from May 31, 2019. Respondent further states due to a pre-existing medical condition, she had exhausted all sick leave and only had 14.30 hours of accrued annual leave on May 31, 2019. Respondent also states that she was approved as a member of the Voluntary Leave Bank Program (VLB Program) on July 29, 2019, for 160 hours of leave to be used during her medical emergency, which the letter states ends on August 1, 2019, the date Respondent stated her medical emergency would end.⁵ Respondent states she accepted the offer of advance leave and approved them using this advance leave and any remaining eligible leave. Respondent indicates that also had some leftover leave from her participation in the Leave Share Bank Program. Respondent asserts that she was not aware of any issues or errors processing her time and attendance while out for maternity leave.

Analysis

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.⁶ Among other things, that notice must explain the "origin, nature and amount of the overpayment."⁷ It must also include Government records on which the overpayment determination was made, or an explanation of how such records will be made

³ 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.

⁴ Initial request was dated October 22, 2019, and subsequent statements were submitted on November 5, 2019, and December 2, 2019.

⁵ Respondent submitted the July 29, 2019 VLB Program approval letter which stated that these hours were to be utilized within the timeframe of May 31, 2019 (201912) to August 1, 2019 (201916). The letter notes that VLB hours are to be coded as LM1 in WebTA, the Department's payroll system.

⁶ 34 C.F.R. § 32.3.

⁷ 34 C.F.R. § 32.3(a).

available to the employee for inspection and copying.⁸ The October 7, 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 her waiver request and documents submitted in support of her request, Respondent has come forward with arguments and documentation that indicate that she does not understand the circumstances surrounding this debt and/or her belief that this debt may be reconciled.⁹ Respondent submitted documentation of amended timesheets from WebTA that reflects that for the pay periods at issue, corrections were made changing the code for leave from the leave share program (LS1) to leave from the VLB Program (LM1). The WebTA indicates that it was changed because Respondent was not an active leave share recipient, although she was an approved VLB Program participant. While an employee is out on an extended medical absence with various leave programs including annual and sick leave advanced by her supervisor, VLB leave, and leave donated from the Department's leave share program, covering that extended absence, it is reasonable and understandable that confusion regarding how and when these competing leave options were or should have been used may occur. This is especially so when an employee is hospitalized or otherwise out on leave for a medical emergency.¹⁰ Respondent was unaware of the errors that led to this overpayment, and at the time of her statement to the tribunal, she had yet to receive the full accounting/audit of her leave that she stated she requested. Accordingly, I conclude that Respondent has met the fault standard in this proceeding.

In determining whether waiver is appropriate requires consideration of two factors, the second being what is known as the equity standard. To secure equity and good conscience, an individual must have acted fairly without fraud or deceit, and in good faith.¹¹ Under the equity standard, an employee must repay a valid debt unless doing so would be inequitable.¹² Beyond this framework, there are not rigid rules governing the application of the equity and good conscience standard. Factors considered under the equity standard 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

In this case, the debt incurred is substantial and despite several efforts to learn the full circumstances surrounding the debt, Respondent has been unsuccessful in acquiring the information to fully understand or challenge this debt. Additionally, since her return to work and the issuance of the Notice of Debt Letter, Respondent has alerted her supervisor to continued anomalies occurring in how her accrued leave is appearing in WebTA and has made more than one attempt to ensure that any further errors be corrected.¹⁴ And, Respondent acknowledges that she may have received holiday pay for pay period 201914 and does not contest this portion of the

⁸ 34 C.F.R. § 32.3(g).

⁹ To date, the tribunal has not been notified that the debt is reconciled or otherwise resolved.

¹⁰ See *In re Veronce*, Dkt. No. 05-14-WA, U.S. Dep't of Educ. (July 22, 2005).

¹¹ 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).

¹² 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).

¹³ *In re David*, Dkt. No. 05-22-WA

¹⁴ See Respondent's November 5, 2019 Statement.

debt.¹⁵ Respondent's request for a partial waiver is granted. 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 92811340638 is **GRANTED** in the amount of \$6,509.96 and **DENIED** in the amount of \$418.16.

So ordered this 28th day of September 2021.

Greer Armandroff
Waiver Official

¹⁵ See Respondent's December 2, 2019 Statement, in which she states she is not contesting this \$ 418.16 portion of the debt.