



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

In the Matter of

BW,

Respondent.

Docket No. 20-13-WA

Waiver Proceeding

Debt ID: 00841744005

DECISION DENYING WAIVER REQUEST

The Office of Hearings and Appeals (OHA) received a request for a waiver of a debt from Respondent, a U.S. Department of Education (the Department) employee, in the abovecaptioned proceeding. This proceeding concerns whether Respondent, a Department employee, should be granted a waiver of a salary overpayment debt in the amount of \$1,483.90. This overpayment arose from the Department's failure to collect health insurance premiums for 19 pay periods from Pay Period 9 of 2019 through Pay Period 1 of 2020. 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.¹ 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 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.²

Facts of the Case

According to the March 23, 2020 reprint of the Notice of Debt Letter and Bill of Collection, Respondent pay for pay periods 201909, 201910, 201911, 201912, 201913, 201914, 201915, 201916, 201917, 201918, 201919, 201920, 201921, 201922, 201923, 201924, 201925, 201926, and 202001 was adjusted because her biweekly health insurance benefits of \$78.10 were not deducted from her pay, cumulating in a debt of \$1,483.90. These pay periods cover the dates from April 28, 2019 through January 18, 2020. According to Respondent, she transferred from another federal agency to the Department in April 2019. Respondent states that during her new employee orientation that she was told that because she was already a federal employee, she was not permitted to change her health insurance benefits until open season. Respondent asserts that she saw her take-home pay actually decrease in January 2020 despite selecting a plan that had a lower premium and emailed her concerns to the Department's Office of Human Resources (HR) office.³ Then, in November 2019, during open season, she changed her health insurance provider from United Health Care to Kaiser Permanente, which had a lower premium. Respondent states that this new health insurance coverage did not start until January 2020, which is the typical time a newly selected health insurance coverage begins after open season. Respondent asserts that after contacting her former insurance provider and HR, she learned she did not have health insurance coverage from May 15, 2019 through January 5, 2020. Respondent argues that she should not have to pay for health insurance coverage that she did not have for this period of time. Conversely, Respondent also states that she had medical appointments in 2019, which made her previously believe she did have coverage during this time.⁴ Respondent does not indicate that she had to pay out-of-pocket as an uninsured individual for these medical appointments.

Analysis

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.⁵ Among other things, that notice must explain the "origin, nature and

² 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.

³ See Respondent's emails with Erik Gallop, Workforce Relations Division, Office of Human Resources, at the Department dated February 5, 2020. Respondent also submitted email exchanges with Jessica Castillo from the Department of Interior, the Department's payroll contractor dated May 6 and 7, 2020, and email exchanges with Naomi Sanchez, Supervisory Human Resources Specialist in Compensation at the Department dated August 8, 2019 and May 5, 2020.

⁴⁴ Respondent submitted a February 1, 2020 letter from United Health Care which indicates that Respondent's coverage ended on May 14, 2019.

⁵ 34 C.F.R. § 32.3.

amount of the overpayment."⁶ 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.⁷ The March 23, 2020 reprint of the Notice of Debt Letter identified the amount of the debt and established the pay periods in which this overpayment occurred.

In waiver cases, the fault standard has specialized and particular meaning. “[f]ault is examined in light of the following considerations: (a) whether there is an indication of fraud; (b) whether the erroneous payment resulted from an employee’s incorrect, but not fraudulent, statement that the employee under the circumstances should have known was incorrect; (c) whether the erroneous payment resulted from an employee’s failure to disclose to a supervisor or official material facts in the employee’s possession that the employee should have known to be material; or (d) whether the employee accepted the erroneous salary payment, notwithstanding that the employee knew or should have known the payment to be erroneous.”⁸

As a starting point, there is no indication that the overpayment at issue in this matter resulted from Respondent’s fraud, actions, statements, or failures to disclose information. Therefore, the only matter left to be considered in the “fault” analysis is whether, during the time she was receiving overpayments of salary, Respondent knew or should have known that the Department had failed to take deductions from her pay for health coverage provided. An employee has a duty to inspect her leave and earnings statements.⁹ Respondent makes no statement or argument regarding why she did not know or should not have known that health insurance premiums were not being deducted from her pay. Given the fact that this failure to deduct premiums occurred over the course of 19 pay periods, it is not reasonable for Respondent not to have noticed this error.¹⁰ In her filing with the tribunal, Respondent indicates that since her belief is that she was not covered by health insurance during the period of time at issue in the debt letter, she should receive a waiver. However, Respondent also indicates that she believed she had coverage because had medical appointments/medical care during that time. Respondent does not indicate whether she was required to pay out-of-pocket for her medical care during 2019. Consequently, Respondent’s failure to notice that her share of health insurance premiums was not being deducted from her pay for the extended period of time at issue is not reasonable nor is it clear that Respondent did not have health coverage for this pay period of time, as she claims.¹¹ Accordingly, I conclude that Respondent has not met the fault standard in this proceeding. Given Respondent’s failure to meet the fault standard, it is not necessary to reach the equity standard.¹²

⁶ 34 C.F.R. § 32.3(a).

⁷ 34 C.F.R. § 32.3(g).

⁸ See *In re Robert*, Dkt. No. 09-10-WA, U.S. Dep’t of Educ. (Nov. 19, 2009)

⁹ See *In re E*, Dkt. No. 15-61-WA, U.S. Dep’t of Educ. (Feb. 5, 2016) at 5; *In re Jacqueline*, Dkt. No. 05-12-WA, U.S. Dep’t of Educ. (July 25, 2005) at 6.

¹⁰ See *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (February 25, 2020).

¹¹ A waiver proceeding does not examine the validity of the debt; this proceeding starts from the premise that the debt is valid and proceeds on equitable grounds to determine whether a waiver is appropriate.

¹² It is worth noting that Respondent made no argument regarding the equity standard other than if she did not have health insurance for this period of time, she should not have to pay for it.

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 00841744005 is **DENIED**.

So ordered this 28th day of September 2021.

Greer Armandroff
Waiver Official