



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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*In the matter of*

**PJ,**

**Docket No. 21-30-WA**

Salary Overpayment  
Waiver Matter

Debt ID: 11661807891

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent, a U.S. Department of Education employee, has filed an overpayment waiver request seeking a waiver of a \$4,228.90 debt identified by Debt ID 11661807891. I previously stayed this case pending resolution of the pre-offset hearing in case 21-29-OF which addressed the same debt at issue here. On September 22, 2021, Administrative Law Judge Elizabeth Figueroa issued a final decision in 21-29-OF ruling the debt valid. Thereafter, I lifted the stay in this case and provided Respondent an opportunity to file further argumentation and evidence. The record has since closed and I proceed with issuing this decision on the merits.

Based on the following analysis, I deny Respondent's waiver request.

**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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>3</sup> 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.<sup>4</sup>

In this case, the debt letter indicates that the “overpayment was a result of [] a time sheet correction processed by your agency for pay period(s) 202025, 202026.”<sup>5</sup> Attached to the debt letter is a list showing pay adjustments for “ANN LEAVE USED,” “SICK LEAVE – USED,” and two entries for “SICK ADV LEAVE – USED.”<sup>6</sup> In the waiver request, Respondent demonstrates an additional understanding of the nature of the debt. Respondent states that she “used advanced sick leave, accrued PTO, and donated leave” while on parental leave from September 20, 2020 through December 18, 2020.<sup>7</sup> In a sworn affidavit filed on September 15, 2021, Respondent further indicates that she worked with her supervisor to attempt to promptly correct a series of payroll coding errors made by the Department.<sup>8</sup> Nevertheless, according to an email from the U.S. Department of the Interior, Respondent was “paid twice” which has resulted in a valid debt subject to collection.<sup>9</sup>

Waiver of an erroneous salary payment is an equitable remedy. To compel the granting of a waiver, a respondent must satisfy 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.<sup>10</sup>

Respondent argues persuasively that the overpayment occurred solely due to the Department’s errors and that she took every reasonable step to resolve these errors. I note that nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. Accordingly, Respondent satisfies the fault standard.

Under the equity standard, an employee must repay a valid debt unless doing so would be inequitable.<sup>11</sup> 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

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<sup>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> *Id.* § 32.3(a).

<sup>4</sup> *Id.* § 32.3(g).

<sup>5</sup> Letter dated June 14, 2021, from Interior Business Center to Respondent at unpag. 1.

<sup>6</sup> *Id.*, Attachment.

<sup>7</sup> Leave Request at unpag. 1.

<sup>8</sup> Respondent Affidavit at unpag. 1.

<sup>9</sup> *Id.*

<sup>10</sup> 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.

<sup>11</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

whether collection of the debt would impose an undue financial burden.<sup>12</sup> The nature of the debt is not punitive; the debt is 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 this case, Respondent's sole argument for finding repayment of the debt to be inequitable is that repayment "would present an extreme hardship" because Respondent is "a relatively new employee of the Department and a new mother" and repayment "would increase the stress on my growing family's finances."<sup>13</sup> Respondent does not provide any documentary evidence demonstrating with specificity how repaying this particular sum will inequitably burden her finances.

In past cases, the mere assertion of financial hardship without sufficient supporting evidence was insufficient to demonstrate that repayment of a debt would be inequitable.<sup>14</sup> In this case, Respondent has provided no evidence that repayment of the debt is so burdensome as to be inequitable. Waiver officials have held, "There is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not tantamount to showing a financial burden such that the equities call for a waiver."<sup>15</sup> In the absence of such a showing, Respondent does not satisfy the second factor and there is no basis for granting a waiver. Accordingly, Respondent's request for a waiver is denied. 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 11661807891 is **HEREBY DENIED**.

So ordered this 19th day of November 2021.

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Charles S. Yordy III  
Waiver Official

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<sup>12</sup> *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).

<sup>13</sup> Respondent Affidavit at unp. 1.

<sup>14</sup> *In re RB*, Dkt. No. 16-36-WA, U.S. Dep't of Educ. (Sept. 16, 2016) at 3.

<sup>15</sup> *In re E*, Dkt. No. 15-07-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep't of Educ. (July 11, 2012) at 9).