



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 22-26-WA

FP,

Salary Overpayment Waiver Matter

Respondent.

Debt ID: 20810044135

DECISION DENYING WAIVER REQUEST

Respondent has filed a request for a waiver of a \$522.64 debt identified by Debt ID 20810044135. According to Respondent, the debt was incurred as a result of the U.S. Department of Education making timesheet corrections due to “additional requests for sick leave taken after certification of my original timesheet” and “a work scheduled change associated with my new compressed schedule.”

In support of the waiver request, Respondent has filed a brief and exhibits, including leave and earnings statements, emails, and the debt letter. 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 not 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.¹ 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 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.² Among other things, that notice must explain the “origin, nature and amount of the overpayment.”³ 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.⁴

In this case, the debt letter asserts that the “overpayment was a result of a time sheet correction submitted by your agency for pay period(s) 202201.”⁵ According to Respondent, the debt arose partially because Respondent submitted 18 hours of sick leave requests subsequent to the pay period in question, after the timesheet had been submitted by the timekeeper on Respondent’s behalf.⁶ Respondent also speculates that the debt arose partially because Respondent’s timesheet was retroactively amended to adopt a compressed schedule.⁷ However, Respondent indicates that both the original and amended timesheets reflected 80 hours for the pay period, so this change should not have resulted in any overpayment.

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.⁸

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.⁹ 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.¹⁰

In this case, Respondent was aware that Respondent’s timesheet would be amended based on multiple circumstances, including the use of sick leave to retroactively replace time presumably coded as working hours. However, there is no evidence in the record that would lead me to believe Respondent recognized at the time that the timesheet amendment would result in an overpayment and debt to the Department. Respondent asserts that Respondent “did not recognize a debt had occurred nor did I intentionally contribute to its occurrence.”¹¹ Accordingly, I find that Respondent satisfies the fault standard.

² 34 C.F.R. § 32.3.

³ *Id.* § 32.3(a).

⁴ *Id.* § 32.3(g).

⁵ Debt Letter at 1.

⁶ Waiver Request at 1.

⁷ *Id.*

⁸ 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.

⁹ *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

¹⁰ *Id.*

¹¹ Waiver Request at 2.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.¹² 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.¹³ The general rule requires the employee to repay the debt unless doing so would be inequitable.¹⁴ 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 this case, Respondent requests a waiver solely based on a lack of fault, but makes no effort to demonstrate why repayment of the debt would be inequitable. In past cases, waiver officials have held, “[t]here 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.”¹⁵ Neither Respondent's submission nor the debt letter show how repayment in this case would be inequitable. In the absence of such a showing, Respondent does not satisfy the second factor and there is no ground for granting a waiver. Accordingly, Respondent's request for a waiver is denied. This decision constitutes a final agency action.

I note that Respondent expressed confusion as to how amendment of a past timesheet could result in an overpayment, when both the original and corrected versions of the timesheet contained 80 hours. The question of whether the Department has established a valid debt is not at issue in a waiver proceeding. That question can only be answered in a pre-offset hearing. Respondent may file a request for a pre-offset hearing within 10 days of receiving this decision.¹⁶

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$522.64 debt to the United States Department of Education captioned Debt ID 20810044135 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: June 8, 2022

¹² *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep't of Educ. (May 5, 2011) at 2–3.

¹³ *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).

¹⁴ *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

¹⁵ *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).

¹⁶ 34 C.F.R. § 32.6(b) (“An employee who has requested a waiver under § 32.4(b) may request a hearing within 10 days of receipt of a determination by the Secretary denying a waiver.”).