



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

KA,

Docket No. 22-35-WA

Salary Overpayment
Waiver Matter

Debt ID: 21371440187

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent has filed an overpayment waiver request seeking a waiver of a \$477.36 debt identified by Debt ID 21371440187. Pursuant to the Order Governing Proceeding, Respondent has filed an additional statement in support of granting the waiver. With the benefit of Respondent's submission, I proceed with deciding 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.

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

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).

² 34 C.F.R. § 32.3.

³ *Id.* § 32.3(a).

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 change to pay rates that was processed by your agency for pay period(s) 202206, 202207, 202208, and 202209.”⁵ According to Respondent, the debt arose because Federal Student Aid (FSA) HR officials erroneously processed multiple within-grade step increases to Respondent’s pay.⁶ Both Respondent and Respondent’s supervisor became aware of the erroneous increases contemporaneous with their processing.⁷ Respondent’s supervisor promptly contacted HR staff to point out the error for correction. Nevertheless, the erroneous HR actions resulted in Respondent receiving overpayments. Respondent requests that I waive the entire debt because the early within-grade step increase was “well deserved” and because of “the debt circumstances and the timeline.”⁸ Alternatively, Respondent requests that I reduce the debt from \$477.36 to \$323.24 because Respondent believes the debt amount was calculated incorrectly.

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.⁹

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.¹⁰ 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.¹¹

In this case, Respondent was aware of the erroneous within-grade step increases. Because Respondent knew of the overpayments, and therefore the accrual of a debt, Respondent cannot qualify for a waiver because Respondent was obligated to set aside money to repay the debt. Failure to satisfy the fault standard is, alone, a conclusive basis to deny the waiver request.

I also note that Respondent does not satisfy 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

⁴ *Id.* § 32.3(g).

⁵ Debt Letter at 1.

⁶ Respondent’s June 13, 2022 Response at 1–2.

⁷ *Id.*

⁸ *Id.*

⁹ 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.

¹⁰ *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

¹¹ *Id.*

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).

inequitable.¹⁴ 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 has not presented evidence showing that 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 Respondent has not demonstrated any specific hardship or other circumstance that would make repayment of the debt inequitable.

Based on the above-analysis, I conclude that Respondent does not qualify for a waiver of any portion of the debt. I note, however, that Respondent asserts that a portion of the debt was calculated incorrectly. The question of whether the Department has established a valid debt is not at issue in a waiver proceeding. As a Waiver Official, I have no authority to determine that any portion of the debt is invalid. 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 \$477.36 debt to the United States Department of Education captioned Debt ID 21371440187 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: June 29, 2022

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.”).