



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 22-41-WA

CB,

Salary Overpayment
Waiver Matter

Debt ID: 21651847129

Respondent.

DECISION DENYING WAIVER

Respondent has filed a request for a waiver of a \$4,336.87 debt identified by Debt ID 21651847129. According to Respondent, the debt was incurred as a result of the U.S. Department of Education (the Department) failing to properly complete the onboarding process when Respondent transferred from the U.S. Department of Veterans Affairs.

In support of the waiver request, Respondent has filed a brief and a copy of 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 deductions paid by your agency on your behalf” for 21 listed pay periods.⁵ According to Respondent, the debt arose the Department failed to complete the onboarding process when Respondent transferred from the Department of Veterans Affairs. As a result, Respondent’s health benefits were terminated. After discovering this error, Department staff reinstated Respondent’s health benefits, resulting in the retroactive collection of health benefit premiums for each affected pay period.

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.⁶

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.⁷ 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.⁸ The general rule is that an employee has a duty to inspect their leave and earnings statements (LES) for errors.⁹ Although no LES have been filed in this case, presumably Respondent’s LES for the applicable pay periods showed no deductions for health insurance premiums. Nevertheless, past waiver decisions of the Department have expressly held that an employee satisfies the fault standard when “there is no evidence or indication that the employee ignored the missing payroll deduction - - notwithstanding that [he or she] should have known of the missing deduction.”¹⁰ In other words, past decisions have held that employees are not obligated to review their LES for missing health benefit premium deductions. In this case, Respondent asserts that Respondent had “no reason or indication that anything related to benefits, anything at all, was left incomplete.”¹¹ Based on past waiver decisions, Respondent’s assertion is sufficient to satisfy 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 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.

⁷ *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

⁸ *Id.*

⁹ *In re TJ*, Dkt. No. 18-68-WA, U.S. Dep’t of Educ. (Mar. 18, 2020) at 3 (citing *In re EC*, Dkt. No. 15-61-WA, U.S. Dep’t of Educ. (Feb. 5, 2016)).

¹⁰ *In re Sue*, Dkt. No. 12-36-WA, U.S. Dep’t of Educ. (Aug. 22, 2012) at 4 (citing *In re Catherine*, Dkt. No. 05-26-WA, U.S. Dep’t of Educ. (Dec. 12, 2005)).

¹¹ Waiver Request at 1.

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 because Respondent "did nothing wrong, fraudulent, or negligent."¹⁵ However, Respondent's assertion that the debt was solely the fault of the Department does not provide any basis for 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."¹⁶ Neither Respondent's submission nor the debt letter show how repayment in this case, to cover the retroactive reinstatement of Respondent's health benefits, 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.¹⁷

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$4,336.87 debt to the United States Department of Education captioned Debt ID 21651847129 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: September 12, 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 Waiver Request at 2.

¹⁶ *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).

¹⁷ Under 34 C.F.R. § 32.6(b), an employee who has requested a waiver under § 32.4(b) may request a pre-offset hearing within 10 days of receipt of a decision denying that waiver.