



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 22-51-WA

JW,

Salary Overpayment
Waiver Matter

Debt ID: 22491495010

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent has filed a request for a waiver of a \$2,286.90 debt identified by Debt ID 22491495010. In support of the waiver request, Respondent provided 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 deny the 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.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 an adjustment processed by your agency” for 11 listed pay periods.⁵ According to Respondent, the debt arose because the Department “made some errors regarding personnel actions/pay codes.”⁶ Neither the documentation provided by the Department nor Respondent’s filing give any greater insight into the nature of the debt.

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.⁷

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.⁸ In this case, Respondent asserts that Respondent “did not have any knowledge of [the Department’s] errors. I do not have the specialized knowledge necessary that would have assisted me in recognizing the HR errors.”⁹ Indeed, the debt letter before me does not explain the origin or nature of the debt as required by 34 C.F.R. § 32.3(a). Without such an explanation, I have no basis to conclude that the debt was of such a nature that Respondent should have known about it. Accordingly, I find that Respondent satisfies the fault standard.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.¹⁰ 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.¹¹ The general rule requires the employee to repay the debt unless doing so would be inequitable.¹² 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.

Respondent requests a waiver because Respondent’s “income supports a family of six people” and repayment “would certainly impose an undue financial burden on my family.” However, Respondent has not presented evidence showing with specificity that repayment of the debt would be an inequitable burden. The mere assertion of financial hardship without sufficient

⁴ *Id.* § 32.3(g).

⁵ Debt Letter at 1.

⁶ Waiver Request.

⁷ 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.

⁸ *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

⁹ Waiver Request.

¹⁰ *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

¹¹ *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).

¹² *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

supporting evidence is insufficient to demonstrate that repayment of a debt would be inequitable.¹³ 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.”¹⁴ Respondent has not demonstrated any specific hardship or other circumstance that would make repayment of the debt inequitable.

Because Respondent has not satisfied both the fault and equity standards, I deny the requested waiver. This decision constitutes a final agency action.¹⁵

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent’s request for waiver of the \$2,286.90 debt to the United States Department of Education captioned Debt ID 22491495010 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: November 16, 2022

¹³ *In re RB*, Dkt. No. 16-36-WA, U.S. Dep’t of Educ. (Sept. 16, 2016) at 3.

¹⁴ *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).

¹⁵ 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.