



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
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In the Matter of

JF,

Respondent.

Docket No. 19-17-OF

Overpayment/Pre-offset Hearing

Appearances: [Redacted], Respondent, self-represented
Lydia T. Makande, Office of the General Counsel, U.S. Department of Education

Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

The Office of Administrative Law Judges has current jurisdiction over the above referenced matter.¹ On October 21, 2019, the Respondent received a Notice of Debt (Notice), under Debt ID Q2951751200, due to an overpayment in the amount of \$139.39. The Notice indicated the overpayment followed a timecard correction for pay period 18 of 2019 (Office of Hearings and

¹ The Department's policy is set forth in the U.S. Department of Education's Administrative Communications System, Handbook for Processing Salary Overpayments (ACSD-OFO-009, approved on January 19, 2012 and updated on July 12, 2022 and August 11, 2022). An erroneous payment to a federal employee, or former federal employee, creates a debt to the United States that requires collection or, in certain instances, allows waiver and various laws are available to the United States to administratively collect or waive these types of debts (5 U.S.C. §§ 5514 and 5584, 31 U.S.C. §§3711 and 3716. *See also*, Debt Collection Act of 1982 (Pub. L. 97-365, October 25, 1982), Federal Debt Collection and Procedures Act (Pub. L. 101-647, Title XXXVI, November 29, 1990), and Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Section 31001, April 26, 1996)).

Historically, these administrative proceedings were the shared responsibility of the Comptroller General of the former General Accounting Office, now the Government Accountability Office, and the various Executive agencies, if the amount of the debt was below a certain dollar amount (*See, <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/waiving-overpayments/>*). With Passage of the General Accounting Office Act of 1996 (Pub. L. 104-316, Section 103(d)), the authority for administrative proceedings to collect or waive these types of debts was given to the Director of Office and Management and Budget (OMB). The Director of OMB redelegated this authority to the Executive Agencies by memorandum, dated December 17, 1996, and the dollar limit previously imposed for jurisdiction by the Executive agencies was eliminated (*See, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/foia/gc_dec17.pdf*).

Appeals Electronic Filing System (OES) Document 1, pp. 9-11).² Initially, the Respondent requested a waiver of the overpayment by letter dated November 5, 2019.³ In a letter dated November 6, 2019, clarification was sought from the Respondent in relation to his request for a waiver (OES Document 2). In an email sent on November 12, 2019, the Respondent clarified he also wanted a pre-offset hearing (OES Document 4).

Thereafter, an Order Governing Proceeding (OGP) was issued requiring the Department to file a complete copy of the notice provided to the Respondent and all government records supporting the alleged overpayment determination along with the Department's brief (OES Document 4).

The OGP required the Respondent to notify the OHA if he consents to use OES for filing, to file a supplementary declaration and copies of his earnings and leave statements beginning with pay period 11 of 2019. The OGP advised the Respondent that the Department's regulations allowed the imposition of an involuntary repayment schedule of 15% of disposable income from each pay period until any established debt is paid in full (*Id.*). Therefore, the OGP allowed the Respondent an opportunity to submit a narrative or brief in response to the Department's brief and to also submit financial information in support of his claim that repayment at the involuntary repayment schedule of 15% of disposable income would result in extreme financial hardship.⁴

The Department timely filed its brief and supporting government records. The Respondent filed a response to the Department's brief. The Respondent's response to the Department's brief only challenged the validity of the debt and did not claim repayment of this debt, if determined to be valid, would cause extreme financial hardship. This record is closed and ready for decision.

II. Issues

Whether the Department has established the debt under Debt ID Q2951751200 is a valid debt and subject to collection by administrative offset.

III. Legal Framework/Applicable Laws and Regulations

A. Debt Collection and Administrative Offset

The Federal Claims Collection Act of 1966 (Pub. L. 89-905, July 19, 1966) was enacted to avoid unnecessary litigation for the collection of claims of the United States. The law has been amended numerous times since 1966. One of the amendments resulted in codification at 31 U.S.C. §3711, which address the collection and compromise of a debt owed to the United States.⁵

² The notice incorrectly indicates the debt was incurred as a result of a correction to the Respondent's timecard for pay period 18 of 2019. The Department's brief and the evidence filed by the Department establishes the debt was incurred following a correction to the Respondent's timecard for pay period 11 of 2019 which resulted in an adjustment and conversion to the Respondent's timecard for pay period 18 of 2018.

³ A Waiver proceeding was docketed under 19-77-WA and the Respondent's request for a waiver was denied in a decision issued December 16, 2019.

⁴ Extensions of time were granted and while the dates of submissions in the initial Order Governing Proceeding were changed, the filing requirements were not.

⁵ This section was subsequently amended by the Debt Collection Improvement of 1996 and the General Accounting Office Act of 1996.

Consistent with the original intent of the Federal Claims and Collection Act of 1966, the current statute requires the head of an executive agency to attempt to collect a claim of the United States Government for money or property arising out of the activities of or referred to the agency (31 U.S.C §3711(a)(1)). The head of the agency must act under regulations prescribed by the head of the agency and the standards that the Attorney General and the Secretary of Treasury prescribe (31 U.S.C. § 3711(d)(1) and (2)).⁶

The Department's regulations are found at Part 32 of Title 34 of the Code of Federal Regulations. Initially, using the Administrative Communications System (ACS), the Department established policy in relation to salary overpayments with the issuance of the Handbook for Processing Salary Overpayments (ACS-OM-04), hereinafter referred to as the Handbook. Revisions were made to that Handbook on January 19, 2012. On July 12, 2022, technical changes were made, and the Handbook was renumbered per the new ACS document numbering system (ACSD-OFO-009). Technical changes and updating of POC/Division references were made on August 11, 2022.

B. Notice Requirements

The relevant federal statute requires that the head of the agency provide notice to a federal employee prior to collection by administrative offset of a salary overpayment (31 U.S.C. §3716). The statute specifically requires that the notice be in writing, identify the type and amount of the claim, state the intention of the agency to collect by administrative offset, and explain the rights of the debtor. The agency must provide an opportunity to inspect and copy the records of the agency related to the claim, an opportunity for review within the agency of the determination of the claim, and an opportunity to make a written agreement with the agency to repay the amount of the claim (*Id.*).

The Department regulations provide that the pre-offset notice be in writing, establish the origin, nature, and amount of the overpayment, how interest is charged, and how administrative costs and penalties will be assessed (34 C.F.R. § 32.3(a) and (b)). The regulations require the Department to demand repayment while providing the opportunity to enter into a written repayment agreement with the Department (34 C.F.R. § 32.3(c)). The regulations require that the debtor be advised of the right to request a waiver, if waiver of repayment is authorized by law (34 C.F.R. § 32.3(d)). The regulations require that the Department identify the intention to deduct up to 15% of the employee's disposable pay to recover the overpayment if a waiver is not granted and the employee has not entered into a written repayment agreement (34 C.F.R. § 32.3(e)). Additionally, the Department must provide specific details about the amount, frequency, approximate beginning date and duration of the intended deduction (34 C.F.R. § 32.3(f)). The Department is required to provide the Government records supporting the debt with the notice or advise how those records will be made available to the employee for inspection and copying (34 C.F.R. § 32.3(g)). Lastly, the regulations require that the debtor be informed of the right to request a pre-offset hearing

⁶ The Attorney General and Secretary of Treasury published a notice of proposed rulemaking on December 31, 1997 (62 FR 68476-01) and the final rule was published on November 22, 2000 (65 FR 70390-01). The regulations for Federal Claims Collection Standards (FCCS) are found at 31 C.F.R. Parts 900-904. The final rule revised the FCCS issued by the Department of Justice and the General Accounting Office on March 9, 1994 and reflected changes under the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

concerning the existence of, the amount of the overpayment, or to seek relief from an involuntarily imposed repayment schedule (34 C.F.R. § 32.3(h)).

The Department policy, which is mostly consistent with the requirements of the applicable statutes and Department regulations, provides further instruction as to how the Department will process salary overpayments and imposes additional requirements upon the Department.⁷

C. Requirement for a Hearing

The statute authorizing installment deduction for indebtedness to the United States resulting from an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances requires an opportunity for a hearing to challenge 1) that a debt exists, 2) the amount of the debt, or 3) in the case of an individual whose repayment schedule is established other than by a written agreement, to establish extreme financial hardship to be relieved of involuntary collection of 15% of disposable income (5 U.S.C. §5514(a)(2)(D)). The Department regulations are consistent with the authorizing statute (34 C.F.R. §§ 32.4(a) and 32.3(e)).

The authorizing statute demands that the hearing be conducted by an individual who is not under the supervision or control of the head of the agency and does not prohibit the appointment of an administrative law judge as the hearing official (5 U.S.C. §5514(a)(2)(D)).⁸ The Department's regulations require that the hearing be conducted by a hearing official who is not an employee of the Department or under the supervision or control of the Secretary (34 C.F.R. 32.5(d)). With the implementation of the Handbook, the Department established policy interpreting this regulation and authorized an administrative law judge employed by the Department to preside over pre-offset hearings. This policy interpretation of the Department's regulation is consistent with the intent of the initiating statute.

The authorizing statute's provision for a hearing on the existence or amount of the debt requires that the agency provide government records to establish the agency's claim for the debt (5 U.S.C. § 5514(a)(2)(B)). The Department's regulation requires that a copy of the government records on which the determination of overpayment was made be included with the pre-offset notice or the employee be informed how those records will be made available to the employee (34 C.F.R. §32.3(g)). As such, the agency carries the initial burden of proof to establish the existence of and amount of the alleged debt.

The Department's regulations require the hearing official to decide whether the Secretary's determination of the existence or amount of the debt is clearly erroneous (34 C.F.R. § 32.9). The

⁷ Current Department policy and practice shows the Department generally relies on its payroll agent, the Department of Interior, Interior Business Center to issue the required notice if the employee is a current employee. Often this notice is in the form of a "Bill for Collection" (as titled by the payroll agent in some notices), "Bill of Collection" (as titled in the Department's policy), or otherwise referenced as a debt letter. In the case where the employee is not a current employee of the Department, the notice is issued by the Department, often relying on the Bill for Collection generated by the payroll agent.

⁸ This statute does not prevent a federal agency from appointing an administrative law judge employed by that federal agency from presiding over pre-offset hearings for an employee at that federal agency (*See*, 7 C.F.R. § 1951.111(b)(5) (defining the Hearing Officer for cases involving USDA employees as an Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA)).

Department's policy describes the "clearly erroneous" standard by referencing a standard of review that governs appellate review of district court findings.⁹ Neither the Department's regulations nor policy provide any rationale or explanation for requiring this standard of review in an administrative proceeding, which generally allows for a *de novo* review.

D. Accrual of Leave

A federal employee accrues annual leave based on years of service (5 U.S.C. §6303). An employee with less than three years of services accrues one-half day each full biweekly pay period, an employee with three years but not more than 15 years of service accrues three-fourth day for each full biweekly pay period except the last full biweekly pay period in a year when one and one-fourth days of leave accrue, and an employee with 15 years of service or more accrues one full day for each full biweekly pay period (5 U.S.C. §6303(a)(1)-(3)). A federal employee accrues one-half day sick leave for each full biweekly pay period (5 U.S.C. §6307(a)).

E. Annual Leave, Advanced, and Accumulation

The administration of annual leave for federal employees is controlled by federal statute and federal regulations. In addition to the law and regulations, certain federal employees may be subject to collective bargaining agreements negotiated with an executive agency that also address annual leave. The Office of Personnel Management (OPM) provides additional guidance for executive agencies related to leave administration and the processing of certain personnel actions. One type of guidance is a fact sheet that provided general information on annual leave entitlement (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/annual-leave>).

By federal statute, annual leave, including annual leave that will accrue to an employee during the year may be granted at any time during the year at the direction of an agency head (5 U.S.C. § 6302(d)). Unless specifically excepted by position, a federal employee may accumulate not more than 30 days at the beginning of the first full biweekly pay period (5 U.S.C. § 6304). Except in limited circumstances, a federal employee who has been advanced leave is indebted to the agency (and the United States) for unearned leave when that employee is separated from service (5 C.F.R. §630.209). Upon separation the agency shall require the employee to refund the amount previously paid for unearned leave or shall deduct that amount from any pay that is due¹⁰ (*Id.*).

An executive agency may implement policy regarding annual leave within the agency. The Department's policy on annual leave is found in Human Capital Policy (HCP) 630-1, Section VI(A). The Department's policy is consistent with the applicable federal statutes and regulations.

F. Employment and Personnel Management

⁹ The Handbook relies on the "clearly erroneous" standard as described in *Anderson v. Bessemer*, 470 U.S. 564, 73-4 (1985).

¹⁰ This requirement does not apply if the separation is due to the death of an employee, or the employee retires for disability or resigns or is separated because of disability.

An executive agency has the general authority to employ individuals consistent with congressional appropriations (5 U.S.C. § 3101). The appointing authority in each executive agency is responsible for notifying the Office of Personnel Management (OPM) of various personnel actions in the competitive service, including, appointment, resignation, and transfer (5 U.S.C. § 2951). The OPM extended this reporting requirement to all civilian employees, whether competitive, excepted, or Senior Executive services (5 C.F.R. § 9.2).

The OPM provides guides for processing personnel actions (<https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Processing-Personnel-Actions>) and each executive agency is responsible for preparing and processing those actions consistent with the guide.

G. Leave Administration

Consistent with its authority pursuant to 5 C.F.R. § 6311, OPM's regulations related to absences and leave are found in Part 630 of Title 5 of the Code of Federal Regulations (C.F.R.). OPM established that the head of an agency is responsible for the proper administration of the leave statutes and regulations (5 C.F.R. § 630.101). That responsibility includes maintaining an account of leave for each employee in accordance with the methods required by the General Accounting Office (*Id.*).

The Department's policy to meet this regulatory obligation is found in the Department's Human Capital Policy (HCP) 630-1, Leave Administration.¹¹ Chapter 63 of Title 5 of the U.S.C. and Part 630 of Title 5 of the C.F.R. is cited as authority for this policy (HCP 630-1, Section I). As such, this policy is expected to be consistent with the statutory and regulatory requirements and should not be more restrictive than those requirements.

The policy establishes procedures on absences and leave, assigns general responsibilities on all leave matters, provides general information to all ED employees about leave, and promotes consistent application of leave policies throughout the Department (HCP 630-1, Section II). This policy defines two non-pay leave statuses. Leave without pay (LWOP) is a temporary non-pay status from a regularly scheduled tour of duty for which pay would otherwise be due and is granted upon the employee's request (HCP 630-1, Section IV). A second non-pay status is absence without leave (AWOL), which is an unauthorized absence from duty without pay (*Id.*). The responsibilities of leave approving officials include, among other things, assuring that all absences from duty are appropriately charged to leave or absence without leave in accordance with this policy, approving and disapproving employee leave requests, maintaining required records on leave, and submitting necessary records to other officials when necessary (HCP 630-1, Section V(E)(3) and (5)).

¹¹ The Department's Human Capital Policies are found on the Department's intranet at [Human Capital Policies \(HCPs\) \(sharepoint.com\)](#). The intranet site shows the most recent issue date for this policy as January 1, 2021. The dated indicated on the first page of the policy is "07/20/2018*" and the asterisk indicates the current policy "[s]upersedes HCP 601-1, dated July 20, 2018 and is current as of January 2021." This information seems to reflect the issue date of January 1, 2021, and suggests there were no substantive changes to this policy as released on July 20, 2018.

IV. Findings of Fact

1. The Respondent commenced his employment with the Department on May 12, 2019 (OES Document 11, p. 41, Exhibit ED-03). The initial Notification of Personnel Action (SF-50) indicated the Respondent was hired as a Legislative Affairs Specialist, with a service computation date (SCD) of September 5, 2014. Based on this SCD, the Respondent was eligible for six (6) hours of annual leave for 25 pay periods and ten (10) hours of annual leave in pay period 26.
2. Two corrected SF-50s were issued. The first corrected SF-50 was processed on June 4, 2019, and changed the Respondent's SCD to May 12, 2019, which consequently adjusted accrual of annual leave to four (4) hours per pay period (OES Document 11, p. 41, Exhibit ED-03). The second corrected SF-50 was processed on July 26, 2019, with a SCD of April 24, 2012, which made the Respondent eligible for six (6) hours of annual leave for 25 pay periods and ten (10) hours of annual leave in pay period 26 (OES Document 11, p. 42, Exhibit ED-03). Each of these corrected notifications had an effective date of May 12, 2019, the Respondent's start date at the Department.
3. In his first two weeks of employment at the Department, occurring in pay period 11 of 2019, family circumstances required the Respondent to request sick leave for Friday, May 17, 2019, and Monday, May 20, 2019 (OES Document 1, p. 19). The Respondent obtained approval for this leave by email from his supervisor on May 16, 2019 (OES Document 1, p. 19). The Respondent's timecard for that first pay period of his employment shows the Respondent was approved for sixteen (16) hours of sick leave, six (6) hours of annual leave, and two (2) hours of administrative leave (OES Document 11, pp. 45-46, Ex. ED-05). Despite these approvals, when the Respondent's timecard was verified by a timekeeper, work on the days he was approved for annual and sick leave were recorded as regular work time (*Id.*).¹² A corrected timecard was not processed until October 3, 2019, which occurred in pay period 21 of 2019 (OES Document 11, pp. 47-48). Consistent with WebTA system requirements, the corrected timecard was saved and validated by a designated timekeeper (*Id.* p. 48).
4. The Respondent requested and was approved for 40 hours of annual leave in pay period 13 of 2019. Since the Respondent had not accrued enough annual leave since the start of his employment with the Department, his supervisor approved advancement of annual leave sufficient to cover the requested annual leave, in this case 32 hours (OES Document 11, pp. 51-52, Ex. ED-05).
5. In pay period 14 of 2019, the Respondent earned two (2) hours compensatory time and two (2) credit hours (OES Document 11, pp. 53-54, Ex. ED-05).
6. In pay period 16 of 2019, the Respondent earned four (4) credit hours, used two (2) credit hours, and used six (6) hours of annual leave (OES Document 11, pp. 59-60, Ex. ED-05).

¹² The evidence shows the Respondent did not have access to WebTA in the first pay period of his employment with the Department.

7. In pay period 18 of 2019, the Respondent requested three (3) hours leave, using two (2) hours of compensatory time and one (1) hour of credit (OES Document 11, pp. 63-64, Ex. ED-05).
8. On October 3, 2019, in pay period 21 of 2019, the Respondent's corrected timecard for pay period 11 of 2019 was processed (OES Document 11, pp. 47-48, Ex. ED-05). Upon the processing of that correction, a series of adjustments and conversions were made to Respondent's timecards for pay periods 11 through 21 of 2019. Adjustments and conversions were made to the Respondent's annual leave, compensatory time, and credit hour balances that were consistent with the principles of the leave conversion matrix.¹³
9. Consistent with the leave conversion matrix, when the corrected timecard for pay period 11 of 2019 was processed, the two (2) hours compensatory time earned in pay period 14 and the (4) four credit hours that were previously earned by the Respondent were applied to reduce the remaining balance of advanced annual leave that was owed as of pay period 18 of 2019. Once those hours were converted to reduce the outstanding advanced annual leave, they were not available to cover the request in pay period 18 of 2019 for leave using two (2) hours of compensatory time and one (1) credit hour.
10. By operation of the leave conversion matrix, when leave in a specific leave category is requested and used but not available, if there is no other available paid leave category to convert for the leave, then leave without pay is charged.
11. The Department's payroll agent issued a Notice of Debt dated October 21, 2019.
12. The Respondent's request for a pre-offset hearing is considered to have been timely filed.

V. Arguments

A. Respondent's Initial Request for a Hearing (OES Document 1)

In the initial request for a hearing, the Respondent asserted that he "took 16 hours of sick leave and 6 hours of annual leave" in the first pay period he was employed with the Department but the request for leave was not submitted prior to the end of pay period 11 of 2019 because he was a new employee and did not have access to WebTA. Upon receipt of access to WebTA, the Respondent asserted he submitted the appropriate leave requests, they were approved by his supervisor, and due to his time employed with the Department, he needed and was approved for advanced leave. The Respondent asserted he notified the approved leave had not been deducted from his leave balances and he asked that the Department make the required corrections. He acknowledged the "leave system readjusted all my leave requests since [his] first pay period" and "converted requests for annual leave to credit hours and comp time." The Respondent asserted this

¹³ The leave conversion matrix is found in the U. S. Department of Interior, *Time and Attendance Guide, Payroll Operations Division*, Appendix F [Time & Attendance Guide \(doi.gov\)](#) (last visited April 20, 2023). This Guide is designed to give timekeepers, certifiers, payroll coordinators, Human Resource staff, and Payroll Operations Division employees detailed information. It also provides technical support for others involved in the time and attendance process.

resulted in his not having credit hours when he submitted a leave request on August 22, 2019, and subsequently the leave system converted “this request for credit hours/comp time to leave without pay.” Lastly, the Respondent argued he did not request LWOP and his approved payable leave was retroactively changed without his knowledge or authorization. The Respondent submitted supporting documentation with his request.

B. Department’s Brief (OES Document 10)

In support of the October 21, 2019, Notice of Debt, the Department asserted the overpayment occurred due to the use of two (2) hours of compensatory time and one (1) hour of credit in pay period 2019-18 that was in excess of available leave when requested. The Department asserted that a correction made to Respondent’s timecard for pay period 11 of 2019 resulted in a series of conversions to cover other leave balance deficiencies and therefore was no longer available for use after the corrected timecard was processed. The Department acknowledged that the Department collected the debt, including \$0.42 interest in pay period 22 of 2019.

The Department filed comprehensive supporting documents labeled Exhibit-ED 01 to 05 (OES Document 12). The Department acknowledged the Respondent commenced employment with the Department on May 12, 2019, which was the beginning of pay period 11 of 2019 (OES Document 12, p. 41 - Ex. ED-03). The Department acknowledged that in the first pay period of the Respondent’s employment, he requested and received permission to take sixteen (16) hours of sick leave and six (6) hours of annual leave. In permitting the use of sick leave, the Respondent’s supervisor authorized an advancement of sick leave in the amount of twelve (12) hours. Despite the request and permission, the permitted sick leave, along with the six (6) hours of annual leave used on May 24, 2019, was recorded as regular work time on the timecard that was processed on May 24, 2019 (OES Document 12, pp. 45-46 - Ex. ED-04). A corrected timecard was not processed until October 3, 2019, which occurred in pay period 21 of 2019, ten (10) pay periods after the timecard for pay period 11 of 2019 was processed.

Prior to the processing of the corrected timecard for pay period 11 of 2019, additional leave was requested and approved, and some of the approved leave was advanced. The Department established that the Respondent requested and was approved for 40 hours of annual leave in pay period 13 of 2019, six (6) hours of annual leave in pay period 16 of 2019, and sixteen (16) hours of sick leave in pay period 17 of 2019 (OES Document 12, pp. 51-52, 59-60, and 61-62 - Ex. ED-04). The Department also established the Respondent requested and received approval to use two (2) hours compensatory time and one (1) credit hour in pay period 18 of 2019 (OES Document 12, pp. 63-64 - Ex. ED-04).

The Department asserted that a recalculation of leave was automatically performed by the Federal Personnel and Payroll System (FPPS) when the corrected timecard for pay period 11 of 2019 was processed in pay period 21 of 2019 and any annual leave that accrued to the Respondent during this period was automatically applied toward the advanced annual leave that was owed. The Department also asserted FPPS converted four (4) credit hours and two (2) hours of compensatory time to annual leave when the corrected timecard for pay period 11 of 2019 was processed, thereby leaving no earned credit or compensatory time to cover the credit and compensatory leave requested and approved in pay period 18 of 2019. Therefore, the Department asserted FPPS

properly converted the credit and compensatory time requested, and approved, to leave without pay, resulting in an overpayment of three (3) hours pay.

The Department's argument mostly parallels its explanation of the creation of the debt and the supporting evidence that was filed with the Department's brief. The Department argues it was undisputed that when the Respondent reported 16 hours of sick leave and 6 hours of annual leave in pay period 11 of 2019, he had not yet accrued any leave. The Department argues it was undisputed that a corrected timecard was necessary due to pay period 11 of 2019 being processed with incorrect entries. The corrected timecard was not processed until pay period 21 of 2019, ten pay periods after the timecard for pay period 11 of 2019 was processed. Upon processing of the corrected timecard, FPPS automatically recalculated all leave accrued and taken from pay periods 11 of 2019 through pay period 21 of 2019. The automatic recalculation resulted in a series of conversions and adjustments to the Respondent's leave balances. Due to automatic recalculations made with the corrected timecard, the two hours compensatory time and one credit hour that was requested as leave by the Respondent in pay period 18 of 2019 were not available, resulting in an automatic conversion to leave without pay. The Department relied on the Payroll Accounting Guide¹⁴ from its payroll agent, the Department of Interior, in support of its argument that the overpayment is a valid debt.

Furthermore, the Department argued that contrary to the Respondent's assertion, LWOP does not require an employee's prior authorization and the employee has the ultimate responsibility for verifying his pay, deductions, and leave. Although, the Department acknowledges the Respondent was not at fault for creating the debt, he was made aware of the timecard corrections that would take place and he had the opportunity to address the fact that it would not be enough to cover his initial sick leave. Lastly, the Department argued there was no evidence that he objected to the planned correction being made to his timecard for pay period 11 of 2019.

C. Respondent's Response or Narrative (OES Document 12)

In response to the Department's brief, the Respondent asserts the overpayment is a result of leave not being advanced. He asserts this problem was exacerbated by his inability to have access to WebTA during his first week of employment with the Department. He challenges the Department's assertion and argument that he was made aware of the timecard corrections by pointing out that the referenced emails were between two people who had access to make the correction to the timecard and he only became aware of the consequences of the corrected timecard when he received his LES. The Respondent asserts he objected when it was identified that the processing of the correction was different than what was intended.

VI. Analysis

The debt asserted in the Notice of Debt dated October 21, 2019, arose from a correction to the Respondent's timecard for pay period 11 of 2019 and the resulting adjustments and conversions

¹⁴ U. S. Department of Interior, *Payroll Accounting Guide*, Payroll Operations Division, [Payroll Accounting Guide \(doi.gov\)](https://www.doi.gov/pag) (last visited April 20, 2023). Specifically, the Department relies on § 2.4.2, which discusses editing T&A Data and edits that perform necessary leave conversions and identify missing T&A records and other situations that require corrective action for the current pay period.

made in all subsequent pay periods after the correction was processed. More specifically, the debt occurred in pay period 18 of 2019 with the request by the Respondent for three hours leave using two hours compensatory time and one credit hour. Pay period 11 of 2019 includes the dates May 12 through May 25, 2019, and pay period 18 of 2019 includes the dates August 18 through 31, 2019. The evidence establishes that in that first pay period, the Respondent did not have access to WebTA, so the timecard was saved and validated for the Respondent by the designated timekeeper.

Although not addressed by the Respondent or the Department in their arguments, there was a corrected timecard to pay period 14 of 2019 (June 23, 2019 through July 6, 2019). The corrected timecard to pay period 14 of 2019, did not impact the Respondent's annual leave balance, but instead recognized the two hours of compensatory time the Respondent earned on June 30, 2019.

Although noted by the Department but not fully discussed by the Department or Respondent, the Respondent's SF-50, which was approved by the designated Approving Official on May 12, 2019, was corrected twice. Upon the Respondent's hiring, his service computation date was initially identified as September 5, 2014. This service computation date (SCD) entitled the Respondent to accrue six (6) hours of annual leave each pay period except for pay period 26, when ten (10) hours of annual leave accrued. Consistent with this SCD, in pay period 11 of 2019, the Respondent accrued six hours of annual leave. On June 4, 2019, a correction to the Respondent's SCD was authorized, but was effective retroactively to his date of hire, May 12, 2019. The change in the SCD to May 12, 2019, resulted in a change in entitlement to only four (4) hours of annual leave in each pay period, thereby reducing the respondent's accrual of annual leave by two hours for pay period 11 of 2019. Consistent with this change, the evidence establishes that the Respondent accrued only four (4) hours of annual leave in pay periods 12 through 16 of 2019. A second correction to the Respondent's SCD was authorized on July 26, 2019, with an effective date of May 12, 2019. In this correction, the Respondent's SCD was changed to April 24, 2012, a date entitling him to accrue six (6) hours of annual leave each pay period except for pay period 26, when ten (10) hours of annual leave accrued. This second correction to Respondent's SCD required re-adjustment to accrued annual leave for pay periods 11 through 16 of 2019, to restore his entitled accrual of six (6) hours per pay period for pay periods 11 through 16 of 2019.

In that first pay period, the Respondent unexpectedly needed to use sixteen hours of sick leave, which was approved by his supervisor. The supervisor approved the requested leave with the understanding that leave would need to be advanced since this was the Respondent's first week of employment with the Department. The authorized leave was not documented by an electronically submitted leave request in WebTA prior to the timecard being processed. Under a circumstance like this, a corrected timecard needs to be processed. A corrected timecard must be completed by an authorized timekeeper and in this case, the corrected timecard was not created until October 3, 2019, ten pay periods later. When the corrected timecard was finally created, automatic recalculations for pay periods 11 through 21 of 2019 were made that advanced sick leave to the Respondent and resulted in adjustments and conversions to annual leave, compensation time, and credit hours that were accrued or earned.

Review of subsequent timecards in the record, establish the Respondent also received an advance of 32 hours of annual leave in pay period 13 of 2019 and an advance of four (4) hours of sick leave in pay period 17 of 2019. Due to the advancement of annual leave and sick leave that occurred

early in the Respondent's employment with the Department, he essentially carried negative balances of annual and sick leave for multiple pay periods. When leave is advanced, with the processing of a subsequent timecard, the advanced leave is automatically recouped.

In the Respondent's situation, the recoupment of the advanced leave, was complicated by the changes to the Respondent's SCD, as evidenced in the corrected SF-50's that were processed on June 4, 2019 and July 26, 2019. The recoupment of the advanced leave was further complicated by the extended delay in processing the corrected timecard for pay period 11 of 2019.

In the determination of the validity of an assessed overpayment, the issue of fault is not material or relevant. It is evident from this record that there were errors made in the processing of the Respondent's timecard and correction for pay period 11 of 2013 and there were additional errors in processing his SF-50's. It is also evident that none of the errors or the delay in processing the corrected timecard for pay period 11 of 2013 were caused by the fault of the Respondent. The application of the law and regulations to the facts, as supported by evidence that is material and relevant to determination of the validity of an overpayment, guides the outcome of this administrative review, not the assessment of fault.

As explained further in this decision, the application of the law and regulations to the facts in this matter along with the government records filed by the Department, establish the validity of the asserted overpayment and debt. Based on the evidence in this record, the arguments made by the Department are more persuasive than the arguments made by the Respondent. Notably the chart of leave categories "earned through 1921, used through 1921, should have at the end of 1921, actually have at the end of 1921, and if annual is used to cover LWOP" presented by the Respondent in an email communication dated October 25, 2019, and found at OES Document 1, p. 5 is not persuasive. It fails to take into consideration the application of the principles of the leave conversion matrix that occurred with the processing of the corrected timecard for pay period 11 of 2019, processed on October 3, 2019.

With each timecard that is verified and certified, the employee, timekeeper, and supervisor will be advised if a warning is issued based on the entries in a particular timecard. The issuance of a warning does not prevent the further processing of a timecard, it only serves to provide notice to the employee, timekeeper, and supervisor that something may require additional attention or additional corrective action. A related remark may be issued on the employee's LES in the same pay period or next pay period.

Warnings were issued in six (6) timecards for the Respondent. A warning was issued with the timecard and corrected timecard for pay period 11 of 2019, indicating that the entries for week one should be verified that they were correctly entered due to the accession date of May 12th. The corrected timecard for pay period 11 of 2019 included an additional warning that the sick leave used in this period is greater than the available balance. This warning further advised that "leave conversion may apply" and referenced the leave conversion matrix for additional information about the application of leave conversion. A warning was issued with the timecard for pay period 13 of 2019 indicated the amount of annual leave used is greater than the available balance, leave conversion may apply, and referenced the leave conversion matrix. In pay period 14 of 2019, warnings identified that the amount of credit hours earned is greater than zero on 6/26 and 6/27

and may be lost after FPPS calculation. In pay period 16 of 2019, a warning identified that annual leave used was greater than available balance, leave conversion may apply, and referenced the leave conversion matrix. Lastly, in pay period 17 of 2019, a warning identified that sick leave used is greater than available balance, leave conversion may apply, and referenced the leave conversion matrix. The respondent verified all timecards except the initial timecard for pay period 11 of 2019 and the corrected timecards for pay periods 11 and 14 of 2019. When the Respondent's access to WebTA was eventually established in the second pay period of his employment, he was then able to access WebTA to review the initial timecard from pay period 11 of 2019 and the corrected timecard for pay period 11 of 2019. All these warnings provided notice to the Respondent that the balances shown in WebTA and on his LES may be subject to modification if leave conversion occurs.

In pay period 18 of 2019, the Respondent requested and was approved leave of three (3) hours. The Respondent's request indicated he was using one (1) credit hour and two (2) hours compensatory time as paid leave. At the time the request for leave was made and approved, the Respondent had a balance of two (2) hours of compensatory time and four (4) hours of credit, however the request for leave was made prior to the correction of the timecard for pay period 11 of 2019, which captured those leave balances in repayment of the advanced annual leave occurring in pay period 13 of 2019.

When the corrected timecard for pay period 11 of 2019 was processed in pay period 21 of 2019, the recalculation of the Respondent's leave accrual and usage and compensatory time and credit hours earned and used was adjusted beginning in pay period 11 of 2019. The leave conversion matrix referenced in the warnings and referenced in the Department's brief identifies how any leave converted to another type of leave is assigned to the cost structure of the leave originally reported.¹⁵ When the corrected timecard for pay period 11 of 2019 was processed on October 3, 2019, the recalculation resulted in an adjustment and conversion of leave balances that used (2) two hours of compensatory time and two (2) credit hours in pay period 14 of 2019, and two (2) of the (4) credit hours earned in pay period 16 of 2019 toward the annual leave advanced in pay period 13 of 2019.¹⁶ Consequently, application of the leave conversion matrix resulted in the recoupment of fourteen (14) hours of the remaining annual hours advanced in pay period 13 of 2019.¹⁷ Following the processing of the corrected timecard for pay period 11 of 2019 and applying the leave conversion matrix, the Respondent had a beginning balance of negative four (-4) annual leave in pay period 17 of 2019 that was maintained in the negative until pay period 19 of 2019.

Following the processing of the corrected timecard for pay period 11 of 2019, the recalculation resulted in the Respondent not having any compensatory time or credit hours available in pay period 18 of 2019. When the respondent requested use of two (2) hours of compensatory time and one (1) credit hour in pay period 18 of 2019, the leave conversion matrix resulted in three (3) hours

¹⁵ See, U. S. Department of Interior, *Time and Attendance Guide, Payroll Operations Division*, Appendix F, [Time & Attendance Guide \(doi.gov\)](#) (last visited April 20, 2023).

¹⁶ The timecard for pay period 16 of 2019 established that the Respondent used two (2) of the four (4) credit hours that were earned credit hours in that same pay period, leaving a balance of four (4) credit hours available.

¹⁷ The fourteen (14) hours recouped included six (6) hours that accrued in pay period 18 of 2019, two (2) hours compensation time that were earned in pay period 14 of 2019, four (4) credit hours that were earned in pay periods 14 and 16 of 2019, and two (2) hours from accrued annual hours that were owed to the Respondent following the July 26, 2019 correction to the Respondent's SF-50.

of leave without pay. When compensatory time is requested and approved but not available, leave converts in the following order: annual leave, personal leave, vacation leave, restored annual leave, then leave without pay. When use of credit hours is requested and approved but not available, leave converts in the following order: travel credit, compensatory time, restored annual leave, annual leave, then leave without pay. If there are no balances in any of the prior categories, then leave without pay is charged by operation of the leave conversion matrix. This conversion does not require a request by the employee of LWOP.

It is unfortunate the Respondent was subject to errors in the processing of his SF-50 during his on-boarding at the Department and thereafter. It is unfortunate that the corrected timecard for pay period 11 of 2019 was delayed for ten (10) pay periods. These errors and delay in processing the correction to the timecard for pay period 11 of 2019, along with the Respondent's use of advanced annual leave, resulted in the Respondent not having an accurate accounting of his leave balances as indicated in WebTA and his LESs during his early tenure at the Department. The WebTA system generated adequate warning notices that may not have been recognized by the Respondent, the designated timekeeper, or the Respondent's supervisor. Ultimately though, the Respondent as the employee is responsible for verification of pay, deductions, and leave. Until there are better management controls established and followed for employee on-boarding, recording and verifying time and attendance by employees, and certifying time and attendance by supervisors, instances like this will continue at the Department. The performance of duties by authorized employees in personnel management (typically a human resources obligation) and the duties of employees, timekeepers, and supervisors for time and attendance are not simply ministerial duties. Errors and delays in processing required personnel actions and time and attendance have impact beyond the error. The impact beyond the error or delayed processing may result in underpayment to an employee, or as in this case, an overpayment to an employee. Unless waived, an overpayment to an employee must be repaid. When a notice of overpayment or debt is challenged in an administrative proceeding such as this, if the Department meets its burden of showing the debt is a valid debt, repayment is required regardless of fault or errors by the Department or employee.

The record establishes that the overpayment was caused by the Respondent's request for use of compensatory time and credit hours in pay period 18 of 2019 that were no longer available after application of the leave conversion matrix with the processing of the corrected timecard for pay period 11 of 2019. Under this circumstance, after the required leave conversions and adjustments made following the processing of the two corrected SF-50s and the corrected timecard for pay period 11 of 2019, the Respondent received payment for time that was not worked and for which no leave was available. By operation of the leave conversion matrix combined with the automatic recouping of the annual leave that was advanced to the Respondent, no paid leave categories were available to cover the leave that was used in pay period 18 of 2019, and the Respondent was automatically and properly charged for leave without pay.¹⁸ The record establishes that the

¹⁸ The Respondent included email communications dated October 31, 2019, in his request for a pre-offset hearing (OES Document 1, pp. 2-4). These communications occurred prior to the Respondent's request for this hearing and attempted to obtain information on further corrections that would prevent a charge of leave without pay so "this debt is not taken out of his next paycheck". In response to his inquiry, the representative at the DOI advised "it is all in the timesheet" and the solution is to review all timesheets that were submitted and make sure they were "submitted as intended." Although given this advice, it does not appear there was a review of the timecard for pay period 18 of 2019 and no correction of that timecard was processed that could have made available a paid leave category instead of a conversion that resulted in a charge of leave without pay, and collection by administrative offset.

overpayment was collected from the Respondent's pay in pay period 22 of 2019 consistent with the rules established in the leave conversion matrix.

VII. Conclusion

The official government records establish the Respondent was paid for three hours that he did not work in pay period 18 of 2019 and for which he had no available paid leave. Therefore, the debt of \$139.39 under Debt ID Q2951751200 is a valid debt that must be paid. The evidence shows this debt was collected by deduction identified as Federal Debt Recover – Involuntary, in pay period 22 of 2019. Consequently, this debt has been satisfied.

This decision constitutes a final agency decision.

Dated: April 24, 2023

Angela J. Miranda
Administrative Law Judge