



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

---

In the Matter of

**Docket No. 23-07-WA**

**DM,**

Salary Overpayment  
Waiver Matter

Debt ID: Q0520881301

Respondent.

---

**DECISION DENYING WAIVER REQUEST**

Respondent has filed an overpayment waiver request seeking a waiver of a \$142.64 debt identified by Debt ID Q0520881301. In support of the waiver request, Respondent provided a letter describing the basis for the request, a copy of the debt letter, and copies of SF-50s. 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.<sup>1</sup> 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.<sup>2</sup> Among other things, that notice must explain the "origin, nature and amount of the overpayment."<sup>3</sup> It must also include Government records on which the overpayment

---

<sup>1</sup> 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).

<sup>2</sup> 34 C.F.R. § 32.3.

<sup>3</sup> *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.<sup>4</sup>

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) 202302.”<sup>5</sup> According to Respondent, the debt arose because a “[cost of living adjustment]” was “processed and then revoked after payment was made.”<sup>6</sup>

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.<sup>7</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>8</sup> In this case, a change in employee’s pay was processed effective January 1, 2023, through an SF-50 approved on January 5, 2023. Subsequently, an SF-50 approved on February 1, 2023, cancelled the previous action, purportedly also effective on January 1, 2023. Nothing in the record provides any context as to what Respondent knew or should have known when the Department processed the first SF-50, when Respondent had access to the associated leave and earnings statement, or when Respondent actually received the overpayment. Based on the lack of information in the SF-50s, I find it more likely than not that Respondent neither knew nor should have known that the payment in question constituted an overpayment. Accordingly, I find the Respondent meets the fault standard.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.<sup>9</sup> 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.<sup>10</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>11</sup> 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 makes no assertion that repayment of the debt creates a financial hardship or otherwise argues that repayment would be inequitable. Respondent’s sole basis for requesting the waiver is that “it wasn’t something that I did,” which speaks only to whether Respondent satisfies

---

<sup>4</sup> *Id.* § 32.3(g).

<sup>5</sup> Debt Letter at 1.

<sup>6</sup> Waiver Request at 1.

<sup>7</sup> 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.

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

<sup>9</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

<sup>10</sup> *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).

<sup>11</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

the fault standard. Because Respondent has not demonstrated that Respondent meets the equity standard, I conclude repayment would not be inequitable.

Because Respondent has not satisfied both the fault and equity standards, I deny the requested waiver. This decision constitutes a final agency action.<sup>12</sup>

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$142.64 debt to the United States Department of Education captioned Debt ID Q0520881301 is **HEREBY DENIED**.

---

Charles S. Yordy III  
Waiver Official

Dated: April 6, 2023

---

<sup>12</sup> 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.