



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 23-10-WA

DF,

Salary Overpayment
Waiver Matter

Debt ID: 22771337913

Respondent.

DECISION GRANTING WAIVER REQUEST

Respondent has filed an overpayment waiver request seeking a waiver of a \$7,446.04 debt identified by Debt ID 22771337919. In support of the waiver request, a representative for Respondent has provided a brief describing the basis for the request and accompanying exhibits. With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I grant 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 a correction to a personnel action that was processed by your agency” from the first pay period in 2021 to the 18th pay period in 2022.⁵ According to Respondent, the debt arose because the Department sought to unwind a “processing error” related to Respondent’s within-grade step increase in 2021. As a result, in 2022, Respondent’s step was reduced to the step Respondent had upon promotion in May 2019. The Department seeks recovery of a debt accrued by overpayments while Respondent was at the higher step in 2021 and 2022.

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 In this case, Respondent received a within-grade step increase approximately two years after a promotion. There is no basis in the record to conclude that Respondent should have identified the step increase as having been done in error. The Department’s own staff apparently believed this increase was proper. Nothing in the record indicates that Respondent was notified that the step increase was processed in error prior to a July 25, 2022, email. 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.⁸ 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.⁹ The general rule requires the employee to repay the debt unless doing so would be inequitable.¹⁰ 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 provided extensive financial records showing Respondent’s regular monthly expenses, including ongoing payment of debts related to home financing and maintenance. Respondent’s regular monthly expenses nearly equal Respondent’s net monthly pay. Notably, in addition to a demand for collection of an overpayment, this case involves a reduction in Respondent’s pay due to an agency error on which Respondent reasonably relied while incurring

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

⁹ *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).

¹⁰ *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

expenses for almost two years. At Respondent's newly lowered rate of pay, the amount of the debt at issue in this case exceeds Respondent's net monthly income. In addition to regular expenses, Respondent has also provided evidence of significant medical expenses incurred this year. Respondent represents that Respondent is the sole source of household income and solely responsible for the debts and expenses evidenced in Respondent's submissions. Based on Respondent's presentation of evidence, I agree with Respondent's assertion that repayment of the debt at issue in this case alongside the combination of other debts would create an undue financial burden so extreme as to be inequitable.¹¹

Because Respondent has satisfied both the fault and equity standards, I grant the requested waiver. This decision constitutes a final agency action.

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$7,446.04 debt to the United States Department of Education captioned Debt ID 22771337913 is **HEREBY GRANTED**.

Charles S. Yordy III
Waiver Official

Dated: April 20, 2023

¹¹ See *In re J*, Dkt. No. 16-27-WA, U.S. Dep't of Educ. (July 29, 2016) at 8 (finding a combination of financial burdens to be a "significant factor" in favor of granting a waiver).