



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4615
TELEPHONE (202) 245-8300

In the Matter of

CO

Docket No.: 22-07-OF

**Overpayment/Pre-offset
Hearing**

Respondent

**Debt ID 212221178279D,
212361178279D,
212501178279D,
212641178279D,
21278118279D,
212921178279D,
213061178279D,
213201178279D,
213341178279D,
213481178279D**

Appearances:

CO, for Self

Joanna Torres, the Office of the General Counsel, U.S. Department of Education,
for U.S. Department of Education

Before: Daniel J. McGinn-Shapiro, Administrative Law Judge

DECISION

On February 17, 2022, the U.S. Department of Education's Office of Hearings and Appeals (OHA) received a request for a pre-offset hearing and a waiver proceeding in relation to an overpayment of \$73.80. The request was filed by Respondent, a former employee of U.S.

Department of Education (ED or the Department). Respondent requests the pre-offset hearing to challenge the amount of the alleged debt. ED has indicated that this debt arose from deferred Old Age, Survivors, and Disability Insurance (OASDI) taxes that ED it is unable to recover because Respondent left her employment with the Department.¹

Facts and Procedural History

I. President’s Memorandum and Department of Treasury Guidance

In August 2020, the President of the United States issued a “Memorandum for the Secretary of the Treasury.”² In the document, the President ordered the Treasury Secretary to defer OASDI taxes on wages paid to some workers between September 1, 2020 and December 31, 2020.³ Specifically, the deferment was for those workers making less than \$4,000 on a bi-weekly basis.⁴ The document also ordered the Department of the Treasury (Treasury) to issue guidance to implement the deferral program.⁵ Treasury issued its guidance in Notice 2020-65, entitled “Relief with Respect to Employment Tax Deadlines Applicable to Employers Affected by the Ongoing Coronavirus (COVID-19) Disease 2019 Pandemic.”⁶ In the guidance, Treasury directed employers to pay the withheld taxes “ratably from wages and compensation paid between January 1, 2021 and April 30, 2021”⁷ The guidance further provided that if necessary, “the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee.”⁸ The guidance defined “Affected Taxpayers” as “employers that are required to withhold and pay the employee share of [OASDI] social security

¹ Debt Letter at 1, Department’s Brief in Support of Debt Determination (hereafter Dept. Brief) at 1, 3.

² See Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, 85 Fed. Reg. 49587 (President of the United States, August 13, 2020).

³ Id. at Sec. 2.

⁴ Id. at Sec. 2(a).

⁵ Id. at Sec. 3.

⁶ Available at <https://www.irs.gov/pub/irs-drop/n-20-65.pdf> (hereafter Treasury Guidance).

⁷ Id. at 2-3.

⁸ Id. at 3.

tax or the railroad retirement tax equivalent. . . .”⁹

ED issued guidance concerning the deferral program to its employees in a frequently asked questions (FAQs) format.¹⁰ In the FAQs, the Department provided information consistent with the President’s memorandum and the Treasury guidance. It also provided additional specific information, including that: (1) eligible federal employees were not be allowed to opt-out of the tax deferral;¹¹ (2) for active employees, to “help ease the payback burden of deferred taxes owed and to begin the repayment process in January 2021,” the Department’s payroll agent would deduct approximately \$50 or less for most employees whose repayment amount was less than \$1,500 and then evenly split the remaining balance between pay periods 2 and 25 in 2021;¹² (3) if an employee left ED before the deferred taxes could be collected in 2021, the employee would still be responsible for the tax repayment;¹³ and (4) for employees who are in inactive pay status, including after a separation or retirement, the Department would try to deduct the balance owed from the lump sum payment but “if full deduction cannot be made, the deferral becomes a liability to the agency and debt to the employee.”¹⁴ The document further explained what a liability to the Agency and debt to the employee meant, stating that (1) ED “pays the deferred taxes on the former employee’s behalf;”¹⁵ (2) because the Department paid the taxes on the employee’s behalf, the taxes become a debt owed by the former employee to ED;¹⁶ and (3) “the

⁹ Id. at 1.

¹⁰ ED Exhibit 5 - Dep’t of Educ., *Deferring Payroll Tax Obligations for ED Employees*.

¹¹ Id. at 1. *See also* Dep’t of the Interior, Payroll Tax Withholding Deferral FAQs, available at <https://www.doi.gov/sites/doi.gov/files/2020-10-19-updated-payroll-tax-withholding-deferral-faq.pdf> (indicating the same).

¹² ED Exhibit 5 at 4.

¹³ Id. at 5.

¹⁴ Id. at 5.

¹⁵ Id. at 5.

¹⁶ Id. at 5.

debt will be transferred to [ED] to pursue under [ED's] normal debt collection process.”¹⁷

II. Deferred OASDI Taxes

Respondent previously worked with the Department's National Assessment Governing Board.¹⁸ During pay periods 19 and 20 in 2020,¹⁹ a 6.2% deduction was not taken from Respondent's gross pay for OASDI taxes.²⁰ Effective May 18, 2021, Respondent left ED.²¹

Respondent asserts that during pay period 7 in 2019, she was underpaid salary as a result of District of Columbia income taxes and a Federal debt recovery both erroneously being taken from Respondent's salary.²² Between April 2019 and February 2022, Respondent made numerous attempts to collect what she viewed as the underpayment of salary.²³

In a letter, dated January 25, 2022, (Debt Letter) ED notified Respondent that an overpayment of salary had been identified and that she owed a debt of \$73.80. The Debt Letter stated that the debt resulted from “deductions paid by the U.S. Department of Education on your behalf for OASDI DEFERRED TAXES.”²⁴

III. Process Before OHA

As noted, Respondent requested a pre-offset hearing and waiver proceeding in an email to OHA. In her request, Respondent did not challenge the debt directly. Rather, she argues that the amount that she owes should be offset by an underpayment of salary owed to her.

¹⁷ Id. at 5.

¹⁸ See ED Ex. 3.

¹⁹ Although the Notice of Debt appears to list pay periods in 2021 after Respondent had left the Department as the basis for the debt, in the Department's brief, it made clear that the debt arose from deferred OASDI withholdings in pay periods 19 and 20 in 2020. Respondent had a meaningful opportunity to respond to the Department's brief after this clarification and address the existence and amount of the alleged overpayment debt.

²⁰ See ED Ex. 4. Although the leave and earnings statements in this exhibit show a deduction for OASDI, the net pay that Respondent received does not include the deduction of the amount listed for OASDI. Additionally, the relevant leave and earnings statements explicitly warn that the employee's net pay includes the deferred OASDI tax amount but reflects the deduction not taken.

²¹ See ED Ex. 3 at 3.

²² Request at 2-3.

²³ Request at 3.

²⁴ ED Ex. 1 – Debt Letter at 1.

On February 17, 2022, this matter was stayed so that the waiver proceeding could proceed. After a decision was issued in the waiver proceeding, denying Respondent's request for a waiver, I issued an order governing proceeding in this matter establishing a briefing schedule. On April 4, 2023, the Department filed its brief in this matter with accompanying exhibits. Although the order governing proceedings provided Respondent an opportunity to respond to the Department's brief, she elected not to file a brief.

To clarify the matter, I issued an order directing the Department to submit additional information whether Respondent was paid a lump sum of pay when she left the Department and if so, whether any deductions were taken from that pay to satisfy the debt at issue in this case. On May 1, 2023, the Department filed a response to the Order representing that Respondent did not receive a lump sum payment when she left the Department.

The record is closed, and this matter is now ready for a decision.

Issue

Whether Respondent has shown that the debt assessed by the Department is not valid or for an incorrect amount.

Summary of Decision

Respondent has failed to show that the debt assessed is a not a valid debt owed to the Department or that it is for an incorrect amount.

Analysis

The President's memorandum and Treasury's guidance implementing that memorandum dictated that the Department was required to defer withholding OASDI taxes from the paychecks of ED employees making less than \$4,000 on a biweekly basis between September 1 and December 31, 2020. Pay periods 19 and 20 were the only pay periods between September and

December 2020 when Respondent earned pay.²⁵ Her gross pay during those two pay periods was \$2,473.18 and \$1,096.98, both which are less than \$4,000. The Department, therefore, properly deferred withholding OASDI tax deductions from Respondent's pay starting with pay period 19, which included September 1, 2020. In pay period 19, the Department did not withhold \$153.34 which normally would have been withheld for OASDI tax deductions.²⁶ In pay period 20, the Department did not withhold \$68.01, which normally would have been withheld for OASDI tax deductions.²⁷ Therefore, over the two pay periods, ED deferred OASDI deductions totaling \$221.35.

In pay periods 3, 4, 5, 6, 8, and 15 in 2021, which are the pay periods in 2021 where she earned money, ED withheld an additional \$7.38 to recover deferred OASDI taxes.²⁸ In addition, the Department recovered \$44.27 in pay period 3, \$7.38 in pay period 6 and 8, and \$44.28 in pay period 15 as "FED DEBT RECOVERY" payments. The Department has stated that these deductions of pay "accounted for a failed deduction(s) for deferred OASDI taxes in an earlier pay period(s)." The Department did exactly what it indicated it would do in the FAQs. It attempted to deduct \$44.27, which is \$50 or less, in pay period 1 and then split the balance of the deductions between pay periods 2 and 25 which resulted in a pay deduction of \$7.38 per pay period.²⁹ For those pay periods where it could not collect deferred OASDI deductions because Respondent earned no pay, pay periods 1, 2, 7, 9, 10, 11, 12, 13, and 14, the Department collected a lump sum of missed deferred OASDI payments during a later pay period where

²⁵ See ED Ex. 4 – LES statements

²⁶ Id. at 1.

²⁷ Id. at 1.

²⁸ See ED Ex. 4 at 11 (indicating that Respondent was paid \$1292.30 which is \$7.38 less than her net pay would have been if the only deductions were the \$615.04 of deductions indicated on the leave and earnings statement. The guidance from Treasury originally directed that deferred OASDI taxes be collected between January 1 and April 30, 2021. Later, that directive was changed to allow employers to collect deferred taxes throughout 2021. See IRS, Internal Revenue Bulletin 2021-6 (Feb. 8, 2021), available at https://www.irs.gov/irb/2021-06_IRB.

²⁹ Dept. Brief at 10.

Respondent earned pay.³⁰ When Respondent left the Department in May 2021, the Department had collected only \$147.55 in deferred OASDI taxes, with a remaining balance of \$73.80.

Treasury directed agencies that they were to “make arrangements to otherwise collect the total Applicable Taxes from the employee.”³¹ ED told its employees that if they moved into inactive pay status because they separated from the Department, and the balance from the deferred taxes was not recouped from a lump sum payout, the deferral would become a debt owed by the former employee to ED and “the debt will be transferred to [ED] to pursue under [ED’s] normal debt collection process.”

The Department asserts that because it was unable to recover \$73.80 of deferred tax payments before Respondent left the Department, it converted the deferred tax payment amount to a debt owed. The record does not indicate that any of the lump sum payment made to Respondent, or any other monies beyond the \$147.55 deducted during pay periods in 2021 when Respondent was paid salary, were used to collect the deferred OASDI taxes. Therefore, following the steps explicitly detailed to ED employees in the FAQs, the Department issued a debt notice to Respondent to collect the deferred OASDI taxes. Respondent has not proven that the debt asserted by the Department is invalid or for the wrong amount.

Respondent argues that the money she owes should be offset by money owed to her based on an underpayment of salary in 2019. A pre-offset hearing, like this one, is limited to only reviewing “the existence or amount of the overpayment or an involuntary repayment schedule.”³² Whether money is owed to her for an underpayment of salary in 2019 resulting from deductions for state taxes and a federal debt recovery is not before me. This matter may

³⁰ Dept. Brief at 9-10.

³¹ Treasury Guidance at 3.

³² 34 C.F.R. § 32.5(a)

only address the debt arising from deferred OASDI taxes.

Findings of Fact and Conclusions of Law

1. Respondent was a Department employee until she left the Department effective May 18, 2021.
2. In compliance with a memorandum from the President of the United States and guidance from the U.S. Department of the Treasury, the Department of Education deferred the collection of OASDI taxes from Respondent's pay between pay periods 19 and 26 in 2020. In total, \$221.35 in OASDI taxes were deferred from Respondent's pay.
3. In compliance with a memorandum from the President of the United States, guidance from the U.S. Department of the Treasury, and its own promulgated FAQs, the Department of Education began the collection of those deferred OASDI taxes in 2021.
4. For pay period 1 in 2021, the Department withheld \$44.27 from Respondent's paycheck to begin recovering the deferred OASDI payments. The Department then equally divided the remaining debt among the remaining 2021 pay periods and began collecting \$7.38 per pay period.
5. When Respondent separated from the Department, \$73.80 in deferred OASDI deductions remained uncollected.
6. In compliance with published FAQs, the Department converted the balance of the deferred OASDI taxes owed to a total debt in the amount \$73.80.

Order

Based on the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that the Department has established a valid debt of \$73.80.

Daniel J. McGinn-Shapiro
Administrative Law Judge

Date of Decision: May 3, 2023