



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

Docket No.: 23-08-OF

CM

**Overpayment/Pre-offset
Hearing**

Respondent

Debt ID: 210821792303D

Appearances:

CM for Self

Lydia T. Makande, 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

The Office of Hearings and Appeals (OHA) received a request for a pre-offset hearing in relation to an overpayment of \$998.85 that was filed by Respondent, a former employee of U.S. Department of Education (the Department or ED) who transferred to the Department of Homeland Security (DHS).¹ Respondent requests the pre-offset hearing to challenge the existence and amount of the alleged debt. The Department has indicated that this debt arose from deferred Old Age, Survivors, and Disability Insurance (OASDI) taxes that ED it is unable

¹ See Dep't Exhibit 1 at 1.

to recover because Respondent left her employment with the Department.²

Facts and Procedural History

I. President's Memorandum and Department of Treasury Guidance

As stated in *In re JA*:

In August 2020, the President of the United States issued a “Memorandum for the Secretary of the Treasury.” 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. Specifically the deferral was for those workers making less than \$4,000 on a bi-weekly basis. The document also ordered the Department of the Treasury (Treasury) to issue guidance to implement the deferral program. 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.” 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” The guidance further provided that, if necessary, “the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee.” The guidance defined “Affected Taxpayers” as “employers that are required to withhold and pay the employee share of [OASDI] social security tax or the railroad retirement tax equivalent. . . .”³

ED uses the U.S Department of the Interior's Business Center (IBC) as its payroll provider.⁴ IBC issued guidance concerning the deferral program to ED employees in a frequently asked questions (FAQs) format.⁵ In the FAQs, IBC provided information consistent with the information that was contained in 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;⁶ (2) that for active employees, the deferral was applied to employees whose gross pay was less than \$4,000 in pay period 19 in

² See Agency Brief In Support of Debt at 1; Letter from Sebrina Bradford to CM (Feb. 10, 2022) (hereafter “Debt Letter”) at 1.

³ Dkt. No. 22-18-OF, U.S. Dep't of Educ. (June 21, 2021) at 2 (internal citations omitted).

⁴ See Dep't Exhibit 3 at 1.

⁵ Dep't Exhibit 3- Dep't of the Interior, Payroll Old Age Survivors Disability Insurance (OASDI / Social Security) Tax Deferral and Repayment - Frequently Asked Questions (FAQs).

⁶ *Id.* at 1.

2020 and whose OASDI wages were less than \$4,000 during periods 21 through 26 in 2020;⁷ (3) 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;⁸ (4) that if an employee left ED before the deferred taxes could be collected in 2021, the employee would still be responsible for the tax repayment;⁹ 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 a full deduction cannot be made, “the deferral becomes a liability to the agency” and that deferral becomes “a debt to the employee.”¹⁰ 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;” (2) because the Department paid the taxes on the employee’s behalf, the taxes become a debt owed by the former employee to ED; and (3) “the debt will be transferred to [ED] to pursue under [ED’s] normal debt collection process.”¹¹ IBC further clarified that although the deferred taxes are not considered a debt as long as the employee is active with the agency in which the deferral occurred, “[a]ccording to the Department of Justice legal interpretation, once an employee separates from the agency in which the deferral occurred, any unpaid balance at that point becomes a ‘debt.’”¹²

II. Deferred OASDI Taxes

Respondent previously worked in the Department’s Office of the Chief Information

⁷ *Id.* at 2.

⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ *Id.* at 5

¹¹ *Id.* at 5.

¹² *Id.* at 3.

Officer.¹³ During each pay period between pay periods 19 and 26 in 2020,¹⁴ a 6.2% deduction was not taken from Respondent's gross pay for OASDI taxes.¹⁵ Effective February 13, 2021, Respondent left ED and transferred to the DHS.¹⁶

In a letter, dated February 10, 2022, (Debt Letter) ED notified Respondent that an overpayment of salary had been identified and that she owed a debt of \$998.85. 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."¹⁷

III. Process Before OHA

Respondent initially requested a waiver proceeding. On March 8, 2023, the waiver official denied Respondent's waiver request and instructed that "Respondent shall have 10 days from receipt of this decision to request a pre-offset hearing."¹⁸ That same day, Respondent requested a pre-offset hearing in an email to OHA. I issued an Order Governing Proceedings, in which I established a briefing schedule and ordered Respondent to clarify "whether Respondent challenges the existence of the debt, the amount of the debt, and/or that an involuntary repayment schedule will cause extreme financial hardship." Respondent responded that she challenged the existence and the amount of the debt.¹⁹ Specifically, Respondent notes that the Debt Letter indicates that the debt was incurred in pay period 6 in 2020, and that the debt is

¹³ See Dep't Ex. 1.

¹⁴ Although the Notice of Debt appears to list pay period 6 in 2020 as the pay period when the debt was incurred, in the Department's brief, it made clear that the debt arose from deferred OASDI withholdings in pay periods 19 through 26 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.

¹⁵ See Dep't Ex. 2 at 1-8. 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.

¹⁶ See Dep't Ex. 1 at 1.

¹⁷ Debt Letter at 1.

¹⁸ *In re MC*, Dkt. No. 22-08-WA, U.S. Dep't of Educ. (March 8, 2023).

¹⁹ See Correspondence from Candace Moore to Daniel McGinn-Shapiro (March 24, 2023).

invalid because taxes were taken from her pay during that period.²⁰

The Department filed its brief in this matter with accompanying exhibits. The Department explains in its brief that the Debt letter is incorrect that the debt arose in pay period 6 in 2020. ED asserts, rather, that the debt was incurred over pay periods 19 through 26 in 2020, when OASDI taxes were not collected. Although the order governing proceedings provided Respondent an opportunity to respond to the Department's brief, she elected not to file a brief.

Additionally, 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. The Department filed a response to the Order representing that Respondent did not receive a lump sum payment when she left the Department because she transferred to another federal agency.

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 not shown 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

²⁰ See *Id.*

December 31, 2020. Pay periods 19 through 26 were the pay periods between September and December 2020.²¹ Her gross pay during those pay periods never exceeded \$3,885.40 and her OASDI taxable income never exceeded \$3,595.32,²² both of which are less than \$4,000. The Department, therefore, properly did not withhold OASDI tax deductions from Respondent's pay between pay period 19, which included September 1, 2020, and pay period 26. During pay periods 19 through 26, the Department did not withhold an amount from each pay check ranging between \$136.70 and \$222.91 for OASDI tax deductions.²³ This amount normally would have been withheld. In total, over the final eight pay periods in 2020, ED deferred OASDI deductions from Respondent's pay totaling \$1,191.16.

In pay period 1 in 2021, IBC, on behalf of the Department, withheld an additional \$49.63 to recover deferred OASDI taxes.²⁴ IBC did exact what it indicated it would do in the FAQs. It withheld approximately \$50.00 or less during the first pay period in 2021 to begin the recoupment of deferred OASDI taxes. IBC then withheld \$47.56 in pay periods 2 through 4.²⁵ This again is exactly what IBC stated that it would do. It split the remaining balance of deferred OASDI payments over the next 24 pay periods.²⁶

When Respondent left the Department in February 2021, the Department had collected only \$192.31 in deferred OASDI taxes and a balance of \$998.85 remained. Respondent transferred to another federal agency, DHS. As the IBC guidance stated, however, because Respondent separated from ED, the agency where the deferment occurred, the unpaid deferments

²¹ See Dep't. Ex. 2.

²² This was calculated by dividing the OASDI deduction amount in pay period 25, the pay period where Respondent's pay was the highest by .062, the OASDI tax rate.

²³ See Dep't. Ex. 2 at 1-8. Respondent's gross salary fluctuated during those pay periods.

²⁴ See Dep't Ex. 6 at 1.

²⁵ See Dep't Ex. 6 at 1-2.

²⁶ 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.

became a debt owed to ED.

Treasury directed agencies that they were to “make arrangements to otherwise collect the total Applicable Taxes from the employee.”²⁷ IBC told ED 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 \$998.85 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 funds beyond the \$192.31 deducted during pay periods 1 through 4 in 2021, 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 provided a reason to determine that the debt asserted by the Department is invalid or for the wrong amount.

Findings of Fact and Conclusions of Law

1. Respondent was a U.S. Department of Education employee until she left the Department effective February 13, 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, \$1,191.16 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 Interior Business Center, on behalf of the Department of Education, began the

²⁷ Treasury Guidance at 3.

collection of those deferred OASDI taxes in 2021.

4. For pay period 1 in 2021, the Department withheld \$49.63 from Respondent's paycheck to begin recovering the deferred OASDI payments. The Department then equally divided the remaining debt among the next 24 pay periods and began collecting \$47.56 per pay period.
5. When Respondent separated from the Department, \$998.85 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 \$998.85.

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 \$998.85.

Daniel J. McGinn-Shapiro
Administrative Law Judge

Date of Decision: May 8, 2023