



**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  
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In the Matter of

**Docket No.: 22-40-OF**

A.K.,

**Overpayment/Pre-offset Hearing**

**Debt ID: 21371440187**

Respondent.

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Appearances:

A.K. for Self

Lydia T. Makande, Esq., Office of the General Counsel, U.S. Department of Education, for U.S. Department of Education

Before: Robert G. Layton, Administrative Law Judge

**DECISION**

The Office of Hearings and Appeals (OHA) received a request, dated July 5, 2022 for a pre-offset hearing in relation to an overpayment of \$447.36.<sup>1</sup> . The request was filed by Respondent, an employee of U.S. Department of Education (ED or the Department).

On July 6, 2022, the tribunal issued an Order Governing Proceedings setting out a briefing schedule. On July 28, 2022, the Department submitted its brief and exhibits. Respondent

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<sup>1</sup> Respondent's request for an offset hearing was filed after a decision denying his waiver request for this same debt was issued on June 29, 2022.

did not file any additional statement or exhibits other than what was submitted in their request for an offset hearing. The debt at issue arose because the human resources office of Federal Student Aid (FSA) prematurely awarded a within-grade pay (i.e., step increase or within-grade increase) to Respondent. Respondent does not challenge the basis for the debt. Rather, he argues that a portion of the debt was erroneously calculated and should be reduced from \$477.36 to \$323.24.

### **Facts and Procedural History**

#### **I. Process Before OHA**

Respondent requested a pre-offset hearing in a letter to OHA received on July 5, 2022, after his request for a waiver of the debt was denied on June 29, 2022.<sup>2</sup>

In the July 5, 2022 request for a pre-offset hearing, Respondent stated that he was requesting a hearing regarding the amount of the debt. Respondent asserted that “there is an error in the government's calculation” of the debt. On July 6, 2022, I issued an Order Governing Proceeding directing the Department to file a “short brief setting forth the basis for its position in relation to the overpayment at issue in this matter” by July 28, 2022, and that if Respondent “so chooses,” he could file a response to the Department’s brief by August 4, 2022. On July 28, 2022, ED filed its brief and exhibits. Respondent did not file a reply. 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 for an incorrect amount.

#### **Summary of Decision**

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<sup>2</sup> See *In re KA*, Docket No. 22-35-WA, U.S. Dep’t of Educ. (June 29, 2022).

Respondent has not shown that the debt assessed is for an incorrect amount.

### **Analysis**

According to the Department, the gross overpayment amounted to \$563.20. However, after all applicable recoverable amounts<sup>3</sup> for monies paid on Respondent's behalf by the Department are subtracted from the debt, a net overpayment of \$477.36 was owed. The debt arose from Respondent's premature within-grade step increase. On June 21, 2020, Respondent was promoted to a GS-13, step 4 from a GS-12, step 8 level and was not eligible for another WGI until on or about June 19, 2022.<sup>4</sup> Less than two years later, Respondent was prematurely promoted to a GS-13, step 5 level on or around February 27, 2022, which was four pay periods short of the required waiting period of two years or 104 weeks between a within-grade increase between step 4 and 5.<sup>5</sup> This erroneous within-grade step increase resulted in an increase in pay for pay periods 2022-06 through 2022-09. According to the Department, Respondent's hourly pay rate increased from \$57.81 to \$59.57 (a difference of \$1.76 per hour), resulting in an overpayment of \$140.80 bi-weekly.<sup>6</sup> During the four pay periods that Respondent received the increased wages, he claimed and was paid for a combination of regular hours worked, and annual and sick leave taken.

Once the Department has identified an overpayment, it has an obligation to recover any amounts paid on the employee's behalf to other entities and credit the Respondent with those recovered amounts. The Department identified gross recoverables in the amount of \$85.84 that could be deducted from the total overpayment of \$563.20 to reduce it to the amount identified in

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<sup>3</sup> Recoverable amounts include any applicable federal, state, and local withholdings; Medicare; OASDI; Retirement; and TSP deductions

<sup>4</sup> See ED Ex. 01.

<sup>5</sup> See 5 U.S.C. § 5335(a); 5 C.F.R. § 531.405(a), (b)(2).

<sup>6</sup> See ED Ex. 01 at pp. 5-10.

the debt letter, \$477.36.<sup>7</sup>

Respondent argues that he should only owe \$323.24, which is the difference between the net amounts of pay he received at the premature within-grade step increase and his correct net pay level for the four pay periods at issue. While Respondent's gross wages increased by \$140.80 bi-weekly, only an average net overpayment of approximately \$80.80 was deposited into his account bi-weekly, resulting in the total net overpayment of \$323.24 referenced by the Respondent in his complaint.

Despite only receiving a total net overpayment of approximately \$323.24, the total amount of Respondent's debt owed to the Department includes both the amount he received directly as a net payment to his bank account, as well as any other amounts disbursed on his behalf – such as for the statutorily-mandated withholdings for Medicare, health benefits, retirement, and federal and state tax withholdings – that the Department could not recover from those other entities. To allow the Respondent to be released from repayment for those would result in the Respondent having double benefit, through the amounts initially paid and through a repayment not including those amounts.

### **Findings of Fact and Conclusions of Law**

1. Respondent is an employee in the Department's Office of Federal Student Aid (FSA), who was promoted from GS-12, step 8 to GS-13, step 4 on June 21, 2020.
2. On or around February 27, 2022, Respondent prematurely received a within-grade step increase in his pay from GS-13, step 4 to GS-13, step 5, four pay periods shy of when it could be earned. Consequently, Respondent received an overpayment from this prematurely awarded step increase for Pay Periods 2022-06 through 2022-09. The resulting gross amount of the overpayment was \$563.20, which included amounts paid directly to Respondent and amounts paid to outside entities on his behalf. The Department was able to recover \$85.84, thus reducing Respondent's debt

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<sup>7</sup> See ED Ex. 03 and Department's Brief at p. 3.

by that amount. Consequently, Respondent's net overpayment is \$477.36 (\$563.20 - \$85.84).

3. The debt amount of \$477.36 is correctly listed in the Department's notice of debt letter and identified as Debt ID: 21371440187.
4. Respondent is liable for the overpayment in the amount of \$477.36.

**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 \$477.36.

**Date of Decision: June 29, 2023**

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Robert G. Layton  
Administrative Law Judge