



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 23-14-WA**

**GR,**

Salary Overpayment  
Waiver Matter

Debt ID: 31641560370

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent has filed an overpayment waiver request seeking a waiver of a \$4,064.13 debt identified by Debt ID 31641560370. In support of the waiver request, Respondent has provided a copy of the debt letter, certain emails, and copies of personnel forms. 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

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<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 an adjustment processed by the payroll office” for nine pay periods in calendar year 2023.<sup>5</sup> According to Respondent, the debt arose because the Department erroneously changed Respondent’s duty station.

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>6</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>7</sup> Employees have “a duty to review any SF-50 issued for clearly identifiable errors.”<sup>8</sup>

In this case, it is unclear exactly when Respondent received the overpayments. The record includes an SF-50 approved on January 5, 2023, showing the correct duty station and apparently the correct grade and step. Chronologically, the next SF-50 submitted by Respondent was approved on May 1, 2023, but effective December 18, 2022, and shows both a correction and a promotion. This SF-50 lists the erroneous duty station. A third SF-50 was also approved on May 1, 2023, effective January 1, 2023, which appears to be a correction to the first SF-50 but also lists the erroneous duty station.

In the waiver request, Respondent indicates that the Department issued “back pay” on May 6, 2023. On May 12, 2023, Respondent sent an email to an HR Specialist stating that Respondent “received a new SF-50 (as well as my back pay)” and acknowledged that the listed salary appeared to be incorrect. In a subsequent email that same day, Respondent noted the erroneous duty station. The Department issued a fourth SF-50, approved May 15, 2023, correcting the duty station.

Whether Respondent received a correct disbursement of “back pay” on May 6, 2023, is not deducible from the record in this case. However, it appears that the entire overpayment was disbursed on that date, even though the debt letter attributes the overpayment to multiple pay periods as an adjustment based on the erroneous duty station listed on an SF-50 retroactively effective to December 18, 2022. Because Respondent should have known of the erroneous duty station when the SF-50 was issued on May 1, 2023, Respondent cannot satisfy the fault standard for the overpayment apparently disbursed on May 6, 2023. Respondent’s commendable effort to

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<sup>4</sup> *Id.* § 32.3(g).

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

<sup>6</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>7</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>8</sup> *In re TJ*, Dkt. No. 18-68-WA, U.S. Dep’t of Educ. (Mar. 18, 2020) at 3, and cases cited.

promptly correct the overpayment is evidence that Respondent knew the payment was incorrect contemporaneous with the disbursement of the funds.

Respondent's failure to satisfy the fault standard is a conclusive basis for denying the waiver request. However, even if Respondent had satisfied the fault standard, Respondent fails to satisfy the equity standard which is also a conclusive basis to deny the request. 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.

In this case, Respondent asserts that the Department's error and subsequent effort to collect the debt has caused undue stress and financial burden. However, Respondent has not supported the allegation of suffering a financial burden with any evidence. Respondent also has not asserted any other reason or unique circumstance that would render repayment of the debt inequitable. Absent such a basis, Respondent fails to meet the equity standard.

Because Respondent has not met the fault or equity standards, I will deny the waiver request. 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 \$4,064.13 debt to the United States Department of Education captioned Debt ID 31641560370 is **HEREBY DENIED**.

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Charles S. Yordy III  
Waiver Official

Dated: August 2, 2023

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<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.

<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.