



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 23-18-WA**

**JE,**

Salary Overpayment  
Waiver Matter

Debt ID: M2320500001

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent has filed an overpayment waiver request seeking a waiver of a \$3,500.15 debt identified by Debt ID M2320500001. In support of the waiver request, Respondent has provided a copy of the debt letter, certain forms related to the debt collection, and a copy of the decision that resulted in a back dated promotion. 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.

To timely request a waiver, a Respondent must file the request within ten days of receipt of the debt letter.<sup>2</sup> In this case, the debt letter is dated July 24, 2023 and states that repayment of the debt is due by August 23, 2023. Respondent filed the request in this case on August 30, 2023. However, the debt letter does not contain any evidence, such as a certified mail tracking number, that establishes when Respondent received the letter. Respondent does not provide any documentary evidence or statements that would allow me to determine the date on which Respondent received the debt letter. Absent any such evidence, I cannot conclude that the waiver

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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. § 32.4(b).

request was not timely filed, and conclude instead that I have jurisdiction to issue the following decision.

## DISCUSSION

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>3</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>4</sup> It must also include Government records on which the overpayment determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.<sup>5</sup>

In this case, the debt letter asserts that the “overpayment was a result of a correction to a personnel action” for pay period 202310.<sup>6</sup> According to Respondent, the debt arose because Respondent received a payment of back pay for a back dated promotion.<sup>7</sup>

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>8</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>9</sup> In this case, Respondent indicates Respondent was aware that a payment of back pay would be forthcoming and requested an itemized final payment amount in advance to assess the payment’s tax implications. However, Respondent asserts that Respondent “was never given a final payment amount or what that amount would be for the back dated promotion and [within-grade increases] plus interest included.”<sup>10</sup> Payment of a large sum of back pay with interest is an unusual circumstance outside the experience of most federal employees. I do not find that Respondent had any specialized knowledge of how the calculation should be performed or what the specific sum would be until after it was paid. Therefore, I find that Respondent meets the fault standard.

I now turn to the question of whether Respondent meets the equity standard. An employee must repay a valid debt unless doing so would be inequitable.<sup>11</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

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<sup>3</sup> 34 C.F.R. § 32.3.

<sup>4</sup> *Id.* § 32.3(a).

<sup>5</sup> *Id.* § 32.3(g).

<sup>6</sup> Debt Letter at 1.

<sup>7</sup> Waiver Request at 1.

<sup>8</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>9</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>10</sup> Waiver Request at 1.

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

burden.<sup>12</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>13</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.

Respondent asserts that repayment of the debt would “cause significant financial hardship.”<sup>14</sup> In support of this statement, Respondent indicates that the Department incorrectly reported Respondent’s tax obligation over the past two years which created a tax debt. Respondent does not provide any specific figures for the amount of the tax debt. Respondent also does not provide any other information that would support finding that Respondent’s cumulative financial burdens make repayment of the debt inequitable, especially because the overpayment in question was coincident with a payment of back pay for a retroactive promotion.

In past cases, waiver officials have held, “[t]here is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not tantamount to showing a financial burden such that the equities call for a waiver.”<sup>15</sup> Respondent has not demonstrated any specific hardship or other circumstance that would make repayment of the debt inequitable. Therefore, I find that Respondent does not meet the equity standard.

Because Respondent has not met equity standard, I will deny the waiver request. This decision constitutes a final agency action.<sup>16</sup>

#### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent’s request for waiver of the \$3,500.15 debt to the United States Department of Education captioned Debt ID M2320500001 is **HEREBY DENIED**.

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Charles S. Yordy III  
Waiver Official

Dated: September 26, 2023

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<sup>12</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>13</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

<sup>14</sup> Waiver Request at 1.

<sup>15</sup> *In re E*, Dkt. No. 15-07-WA, U.S. Dep’t of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep’t of Educ. (July 11, 2012) at 9).

<sup>16</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.