



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the Matter of

Docket No. 23-19-WA

JB,

Salary Overpayment
Waiver Matter

Debt ID: 31500836315

Respondent.

DECISION DENYING WAIVER REQUEST

Respondent has filed an overpayment waiver request seeking a waiver of a \$3,688.86 debt identified by Debt ID 31500836315. In support of the waiver request, Respondent has provided a copy of the debt letter. 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.¹ 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.² In this case, the debt letter is dated August 18, 2023, and states that repayment of the debt is due by September 17, 2023. The physical copy of the waiver request was filed on September 14, 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

¹ 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).

² 34 C.F.R. § 32.4(b).

waiver 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.³ Among other things, that notice must explain the “origin, nature and amount of the overpayment.”⁴ 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.⁵

In this case, the debt letter asserts that the “overpayment was a result of a correction to a personnel action” for 25 pay periods in calendar years 2021 and 2022.⁶ A bill for collection included with the waiver request states the “Reason for the Bill of Collection” is “A personnel action effective 4/12/2020 created a salary overpayment.” According to Respondent, the debt arose because Respondent “was being paid more than I was supposed to” which Respondent learned on “May 4th.”⁷ I interpret Respondent’s statement to mean Respondent learned of the overpayment on May 4, 2023.

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.⁸

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.⁹ Nothing in the debt letter, bill for collection, or Respondent’s waiver request provides to me any insight as to the reason why Respondent received overpayments for nearly a year. I rely on Respondent’s undisputed statement that Respondent did not know of the overpayment until “May 4th” of 2023, which is well after the latest pay period when an overpayment occurred according to the debt letter: pay period 8 of 2022. Nothing in the record indicates to me that Respondent knew or should have known of the overpayments prior to May 4, 2023. 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.¹⁰ 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

³ 34 C.F.R. § 32.3.

⁴ *Id.* § 32.3(a).

⁵ *Id.* § 32.3(g).

⁶ Debt Letter at 1.

⁷ Waiver Request at 1.

⁸ 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.

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

¹⁰ *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

based on the overpayment; and whether collection of the debt would impose an undue financial burden.¹¹ The general rule requires the employee to repay the debt unless doing so would be inequitable.¹² 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's sole unsupported statement applicable to the equity standard is that "I cannot afford to pay back what was erroneously added to my check for the months that it occurred."¹³ Respondent does not make any showing of personal finances or other specific circumstances that would make repayment of the debt so burdensome as to be unconscionable.

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."¹⁴ Respondent has not demonstrated any specific hardship 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.¹⁵

ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the \$3,688.86 debt to the United States Department of Education captioned Debt ID 31500836315 is **HEREBY DENIED**.

Charles S. Yordy III
Waiver Official

Dated: October 23, 2023

¹¹ *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).

¹² *In re Sarah*, Dkt. No. 11-07-WA at 2-3.

¹³ Waiver Request at 1.

¹⁴ *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).

¹⁵ 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.