

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

IMRON A. BHATTI,

Petitioner.

19-JM-0034-OH-001

May 1, 2019

Appearances:

Imron A. Bhatti

*Pro Se*

Jacqueline R. Baker, Esq.

Micah Lemons, Esq.

U.S. Department of Housing and Urban Development

*For the Government*

BEFORE: J. Jeremiah MAHONEY, Chief Administrative Law Judge

**DECISION AND ORDER**

This matter is before the Court upon a petition for review of a proposed offset of a federal employee's salary. In August 2018, the U.S. Department of Housing and Urban Development ("HUD") initiated salary offset proceedings pursuant to 5 U.S.C. § 5514, as implemented by 24 C.F.R. §§ 17.83 to 17.113, to collect \$4,131.76 allegedly owed to HUD by employee Imron A. Bhatti ("Petitioner") due to an overpayment of locality pay. As Petitioner, Mr. Bhatti requested a waiver of the alleged debt, incurred due to failure of a HUD human resources employee to properly process his reassignment. On November 26, 2018, a HUD human resources executive denied Petitioner's request to waive collection of the alleged debt. Petitioner timely filed a hearing request ("*Petition*") with this Court on December 10, 2018, pursuant to 5 U.S.C. § 5514(a)(2)(D).

Upon receipt of the *Petition*, the Court issued a *Notice and Scheduling Order* notifying the parties that the hearing would be limited to a review of the written record absent a showing of good cause for an oral hearing. Neither party requested an oral hearing. HUD filed a position

statement and a copy of the Administrative Record on February 19, 2019. Petitioner filed a reply on March 12, 2019. The record is now closed and this matter is ripe for decision.<sup>1</sup>

### **APPLICABLE LAW**

When a federal agency such as HUD determines that one of its employees owes a debt to the United States, the agency is statutorily authorized to collect the debt via paycheck deductions of up to 15% of the employee's disposable pay. 5 U.S.C. § 5514(a)(1). Before an agency begins offsetting an employee's salary, it must provide the employee with notice and an opportunity for a hearing on (1) the existence and amount of the debt, and (2) the terms of the repayment schedule. *Id.* § 5514(a)(2)(A), (D); *see* 24 C.F.R. § 17.89. Pursuant to HUD's implementing regulations, the allegedly indebted employee may petition this Court for such a hearing. 24 C.F.R. § 17.91.

### **BACKGROUND AND FINDINGS OF FACT**

Petitioner is an Equal Opportunity Specialist for HUD's Office of Fair Housing and Equal Opportunity ("FHEO") who was reassigned to an FHEO regional office in Chicago on September 17, 2017. Previously he had worked in an FHEO office in San Francisco.

Petitioner was reassigned based upon his hardship request. The memorandum from HUD approving Petitioner's reassignment from San Francisco to Chicago notified him that he would be transferred "with the base pay plus locality adjustment for the Chicago, IL area." However, HUD failed to adjust Petitioner's locality pay.

On May 16, 2018, Petitioner notified Everard Mattox, Director of FHEO's Resource Management Division, that his tax information, locality pay, and duty station had not been updated in Concur, which is an electronic system through which government employees book work-related travel and request reimbursement for travel expenses. Mattox referred Petitioner to a Management Analyst within HUD's human resources division. In an email to Petitioner, the analyst explained that someone had failed to issue the required personnel action documenting Petitioner's move to Chicago and stated that she was working to resolve the issue.

On July 22, 2018, a personnel action was issued retroactively transferring Petitioner's duty station from San Francisco to Chicago, effective September 17, 2017. Because San Francisco has a higher locality pay than Chicago,<sup>2</sup> the retroactive correction generated a \$4,131.76 bill to Petitioner for the erroneously overpaid locality pay he received from September 17, 2017, through July 22, 2018.

On August 20, 2018, the U.S. Treasury Department's Bureau of the Fiscal Service ("BFS"), which conducts payroll processing and other human resources work for HUD, sent

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<sup>1</sup> The parties' submissions and the issuance of this Decision were delayed by a lapse in appropriations that occurred on December 22, 2018, and caused a partial federal government shutdown, resulting in the closure of this Court until January 28, 2019. All matters pending before the Court were stayed for the duration of the shutdown.

<sup>2</sup> *See* OFFICE OF PERS. MGMT., "Salary Table 2019—GS," available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/saltbl.pdf>.

Petitioner a memorandum enclosing a Notice of Overpayment of Salary and Demand for Payment in the amount of \$4,131.76. The memo notified Petitioner that he could ask HUD to waive collection of the alleged debt or could enter into an agreement with HUD to offset his salary by an agreed amount to repay the debt. Otherwise, if he took no action, his salary would be offset by 15% of his disposable net pay, estimated at \$334.09 per pay period, beginning in pay period 19 of 2018.

As previously noted, Petitioner submitted a waiver request to HUD arguing that it was not his fault the personnel action documenting his move from San Francisco to Chicago had been delayed, adding that he had notified human resources as soon as he noticed the overpayment. By letter dated November 26, 2018, the deciding HUD human resources official denying the waiver informed Petitioner that he could file a hearing request within 15 days pursuant to 5 U.S.C. § 5514. Thereafter, Petitioner timely filed the *Petition* that initiated the instant proceeding.

### **DISCUSSION AND CONCLUSIONS OF LAW**

HUD asserts that, because Petitioner's locality pay was not updated immediately when he was reassigned from San Francisco to Chicago, he received an overpayment of salary resulting in a valid debt of \$4,131.76. HUD proposes to offset Petitioner's salary by \$334.09 per pay period to collect the debt.

Petitioner argues that he should not be liable for the alleged debt because the overpayment was the result of HUD's mistake, he had no reason to suspect an error in his pay, he promptly notified the agency when he discovered the error, and he was assured by the FHEO Resources Management Division that he would not be asked to reimburse HUD. Petitioner asks this Court to waive collection of the debt, asserting that HUD's denial of his waiver request was inappropriate. Alternately, if found liable for the debt and required to repay it, Petitioner asks that the offset payments be capped at the higher of either 5% of his net pay or the amount he was overpaid per pay period.

For the reasons discussed below, the Court finds that Petitioner owes a valid debt in the amount of \$4,131.76 and that it is appropriate for HUD to offset his salary by \$111.36 per pay period until the debt is collected in full.

#### **I. Existence and Amount of Debt**

As noted above, Petitioner was reassigned from an office in San Francisco to an office in Chicago effective September 17, 2017. As a federal employee, Petitioner receives a base salary plus locality pay. The locality pay for San Francisco is higher than for Chicago. Thus, the locality pay to which Petitioner was entitled decreased as of the date of his transfer to Chicago. However, until July 22, 2018, HUD failed to issue a personnel action changing Petitioner's duty station to Chicago in its payroll records and concomitantly adjusting his locality pay. As a result, from September 17, 2017 to July 22, 2018, HUD incorrectly continued paying Petitioner his base salary plus the locality pay for San Francisco instead of Chicago.

Petitioner was incorrectly overpaid from September 17, 2017 to July 22, 2018, and he thereby incurred a debt in the amount of the overpayment. See 24 C.F.R. § 17.83(f) (defining a “debt,” for purposes of 5 U.S.C. § 5514, to include amounts owed from sources including “overpayments”). HUD has submitted a bill from BFS showing that Petitioner was overpaid a total of \$4,131.76. Petitioner does not dispute this amount.

Petitioner points out that it was HUD’s mistake, not his, that caused the overpayment. This is undisputed. He argues that he should not be liable because he has shown honesty and good faith in this matter.<sup>3</sup> Specifically, he maintains that he had no reason to suspect an error in his pay, but promptly notified HUD when he discovered it, at which point he was told by human resources personnel within HUD that he would not have to reimburse the agency.<sup>4</sup>

The factual record supports Petitioner’s assertions. Admittedly, the overpayment was caused by HUD’s own failure to properly process paperwork upon Petitioner’s reassignment to Chicago. There is no evidence that Petitioner knew or should have known he was being overpaid. Although his average take-home pay increased slightly after he was transferred to Chicago, Petitioner explains that this did not raise his suspicions because he had been promoted from a GS-12 to a GS-13<sup>5</sup> immediately before the transfer and was expecting to pay lower income tax in Illinois. He was overpaid a gross amount of approximately \$188 per pay period, but after withholding, the difference in his take-home pay was only about \$100 per pay period. As a relative portion of Petitioner’s GS-13 paycheck, a \$100 discrepancy is small enough that the Court agrees it would not reasonably have aroused his suspicions, given that his base salary and tax withholding had just changed. Petitioner, not HUD, discovered the error in late April or early May, and confirmed it by reviewing information in three different computerized government information systems.<sup>6</sup> He promptly notified HUD of the error on May 16, 2018, and followed up with human resources personnel in June 2018 after nothing was done to fix the problem immediately. Petitioner’s actions demonstrated responsibility, diligence, and a good faith desire to fix the problem.

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<sup>3</sup> The deciding official’s letter denying the waiver request asserts that “it is the responsibility of each employee to review their Earnings and Leave Statement on a regular basis,” seemingly implying that the overpayment—or its extent—was somehow the fault of Petitioner. The plain fact is that Petitioner discovered HUD’s mistake before HUD did. And he reported it to HUD. For all the efficiency HUD has shown in this matter, the overpayments—each bi-weekly pay period—might not have otherwise been discovered (if at all) until computation of Petitioner’s final pay at the end of his employment.

<sup>4</sup> The fact that Petitioner reported the overpayments as soon as he discovered them—and the fact that a human resources employee erroneously told him he would not have to repay the overpayments—are both mitigating factors, but they do not change the fact or extent of his indebtedness.

<sup>5</sup> “GS” refers to the “General Schedule,” which is the pay system under which most federal employees are compensated. The GS is divided into 15 numbered grades. The base salary for each grade is uniform nationwide, but, as indicated above, is subject to adjustment based on locality.

<sup>6</sup> Specifically, in his initial email notifying HUD of the error and in his waiver request, Petitioner explained that he suspected there was a problem with his pay only after (1) noticing errors in Concur, (2) checking his Earnings and Leave Statements, which would have been posted on his Employee Personnel Page, and (3) reviewing an SF-50 (a personnel action) that had been posted to his HR Connect account earlier that year. The fact that Petitioner had to collect information from three different password-protected electronic systems to determine there was an error in his pay, coupled with the fact that HUD itself did not detect the error, reinforces the argument that a reasonable employee would not have realized he was being overpaid under the circumstances.

Meanwhile, human resources personnel within HUD led Petitioner to believe that he would not have to repay the amounts he had already received in error. Specifically, Petitioner was informed that he would not be obligated to reimburse HUD for an administrative error made by the agency. Thus, HUD mistakes not only caused Petitioner to incur the debt, but also incorrectly advised him that he would not have to repay it.

Nonetheless, Petitioner owes a valid debt. He was not entitled to receive San Francisco locality pay after his transfer to Chicago. His good faith and HUD's fault, however, do not create a legal right for him to keep the federal funds he received in error. No good deed, at least in this respect, goes unpunished.

To the extent Petitioner is trying to raise an estoppel argument against HUD, "it is well settled that the Government may not be estopped on the same terms as any other litigant." Heckler v. Cmty. Health Servs., Inc., 467 U.S. 51, 59 (1984). In the rare circumstances where courts have entertained an estoppel argument against the government, they have required a showing of affirmative misconduct by the government and detrimental reliance by the party claiming estoppel. See, e.g., Kennedy v. United States, 965 F.2d 413, 417 (7th Cir. 1992). In this case, Petitioner claims detrimental reliance because he did not set aside money to repay the debt based on HUD's erroneous advice that he would not have to do so. However, the total amount he owes is relatively small compared to his GS-13 salary. He has not established financial hardship or inability to pay. His failure to reserve funds for a lump sum repayment can be mitigated by implementing a reasonable repayment schedule. Accordingly, the Court declines to take the unusual step of allowing an estoppel claim to prevail against the government.

Based on the foregoing, the Court finds that Petitioner owes HUD a valid debt in the amount of \$4,131.76.

## II. Petitioner's Waiver Request

HUD is authorized to waive collection of a debt arising out of an overpayment to an employee if collection "would be against equity and good conscience and not in the best interests of the United States," unless there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. 5 U.S.C. § 5584.

In this case, HUD's Office of the Chief Human Capital Officer ("OCHCO") denied Petitioner's waiver request through a November 26, 2018 letter to Petitioner that stated: "An administrative error cannot be the sole basis for granting a waiver, and subsequently allow you to retain money that you were not legally entitled to receive. The collection of this debt is being executed with equity and good conscience, and is in the best interest of the Department and the Federal Government."

Petitioner now asks this Court to grant a waiver, arguing that OCHCO's denial was inappropriate. Petitioner contends that the denial was based on a misstatement of law, as there is no basis in 5 U.S.C. § 5584 or in HUD's regulations for the conclusion that an "administrative error cannot be the sole basis" for a waiver. Petitioner notes that HUD has not defined what offends equity and good conscience or offered any clear standards on how this determination is

made, nor has HUD explained how it determined that collection was equitable in this case. However, citing the government-wide policy that formerly controlled waiver determinations in overpayment cases,<sup>7</sup> Petitioner argues that collection of the debt would not be equitable or in good conscience here because he has shown honesty and good faith, there is no indication of fraud or misrepresentation, and he detrimentally relied on HUD's assurance that no claim would be made.

This Court has already found that the factual record supports Petitioner's arguments that he acted in good faith and that HUD, not Petitioner, was at fault. The Court also agrees that HUD's handling of Petitioner's waiver request is troubling.

First, it is unclear what standards HUD relies on when considering waiver requests. To the Court's knowledge, HUD has not promulgated any regulations or issued any guidance that would shed light on its process of considering waiver requests under 5 U.S.C. § 5584. Further, in this case, the letter from OCHCO denying Petitioner's request does not explain the reasoning behind the denial in any detail. *See also In re Bonita Renner*, HUDOHA 18-AF-0087-OH-002, slip op. at 8 (HUDOHA Apr. 2, 2019) (stating that letter from OCHCO denying waiver request, which contained substantially similar language to letter at issue in this case, "lacked an analysis of how collection of the debt was being executed with equity and good conscience, or why it was in the best interest of the Department and the federal government"). It is not apparent that HUD considered the factual allegations and arguments Petitioner has raised before this Court or gave him a reasonable opportunity to raise these allegations and arguments.<sup>8</sup>

In addition, to the extent HUD denied Petitioner's waiver request based on the principle that "[a]n administrative error cannot be the sole basis for granting a waiver" and allowing retention of money Petitioner was "not legally entitled to receive," HUD has identified no legal authority to support this principle. The apparent reasoning—that Petitioner was not legally entitled to the money and the administrative error does not matter—is so broad that it would seem to preclude waiver under almost any circumstances in overpayment cases. *See, e.g., In re Bonita Renner*, slip op. at 8. But waiver of debts under 5 U.S.C. § 5584 is an equitable remedy that should be granted or denied based on the facts of each individual case. *See In re Phyllis J.*

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<sup>7</sup> This policy, implemented by the Government Accountability Office ("GAO"), considered "whether an employee knew or reasonably should have known that an erroneous payment had occurred and whether an employee reasonably could have been expected to make inquiries regarding an unexplained increase." OFFICE OF PERS. MGMT., "Fact Sheet: Waiving Overpayments," available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/waiving-overpayments/>. Waiver authority that formerly resided with GAO, has now been delegated to the heads of executive agencies. *Id.*

<sup>8</sup> HUD requires employees to submit their waiver requests to BFS, which then submits a memorandum to OCHCO enclosing the request. In this case, Petitioner sent BFS an email on September 7, 2018, explaining the error that had occurred in his pay; stating that he had not caused the error and had notified human resources as soon as he discovered it; and requesting a waiver. On September 17, 2018, a BFS representative responded by forwarding a waiver request form that did not seek to collect information on financial hardship, fault, or other equitable considerations such as those raised in Petitioner's email, but instead merely asked Petitioner multiple times, in different ways, how and when he had learned of the error in his pay. The BFS representative noted that the form "needs to be completed and returned to me immediately as the 30-day window to request a waiver is drawing near (must be sent back to me before 9-20-2018)." Petitioner duly filled out and submitted the waiver request form, which was sent to OCHCO under a cover memo from BFS on October 16, 2018. It is not clear to the Court that this process afforded Petitioner a fair and reasonable opportunity to argue his case for a waiver, as his arguments were limited to the information requested on the form and he was given a relatively short period of time to submit it.

Wright, No. B-272194, 1996 U.S. Comp. Gen. LEXIS 428, at \*3 (Comp. Gen. Aug. 27, 1996). Refusing to waive some or all of a debt without some explanation—when the overpayment was discovered and self-reported by the employee—might discourage others, similarly situated, from doing likewise.<sup>9</sup>

Finally, the Court also notes that the HUD Secretarial delegation vesting waiver authority in OCHCO creates an apparent conflict of interest in salary overpayment cases. See In re Bonita Renner, slip op. at 3 n.2 (explaining that HUD’s waiver procedure “raises the specter of ‘home-towning’”). As the program office within HUD that is responsible for pay administration, OCHCO ultimately bears responsibility for the error that created the salary overpayment debt. Heads of other federal agencies have delegated overpayment waiver authority to a disinterested official within the agency. See, e.g., DEP’T OF EDUC., Handbook OM-04: Handbook for Processing Salary Overpayments 7 (2012), available at <https://www2.ed.gov/policy/gen/leg/foia/acshbom4.pdf> (delegating waiver authority to an independent hearing office); see also In re Bonita Renner, slip op. at 7 n.9 (suggesting that waiver decisions should be assigned to or reviewable by another office within HUD). But in the instant case, Petitioner’s waiver request was considered and decided by the very office that caused the erroneous overpayment. See id., slip op. at 11 (concluding that “allowing the same office that made the mistake to decide whether to waive the debt that it caused is not equitable”)

Despite these concerns, the Court’s jurisdiction in this proceeding is limited to determining the existence and amount of the debt and the appropriate repayment schedule. See 24 C.F.R. § 17.91(a). The Court lacks authority to review HUD’s waiver decision or to issue a waiver. See In re Jennifer Smith, HUDOHA 11-F-044-SO/1, slip op. at 5 (HUDOHA Aug. 30, 2011). Accordingly, the Court must deny Petitioner’s request to waive the debt.<sup>10</sup>

### III. Repayment Schedule

HUD proposes to offset Petitioner’s salary by \$334.09 per pay period, which is approximately 15% of his disposable pay. However, Petitioner asks the Court to cap the offset at either 5% of his net pay or the amount he was overpaid per pay period, whichever is higher.

The Court has already found that Petitioner was not at fault in this matter and that HUD erroneously advised him he would not be asked to repay the debt. Petitioner asserts that he did not set aside money to repay the debt, in reliance on this erroneous advice. He states that HUD’s proposed offset schedule of \$334.09 per pay period would be burdensome considering his existing financial commitments, including student loans. Based on these considerations, the Court will grant Petitioner’s request to cap the offset at a lesser amount per pay period.

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<sup>9</sup> Stepping back from this particular overpayment, an employee’s report of OCHCO’s failure to properly administer and execute his reassignment could even be viewed as a form of whistle-blower complaint. The fact would remain however, that the employee was overpaid, and reasonable recouping of the overpayment is hardly a form of retaliation. However, like a finder returning lost property, some expression of gratitude by the owner might be in order upon its return.

<sup>10</sup> Petitioner is not without recourse, as he may seek review of this final agency action in a federal district court pursuant to 5 U.S.C. Chapter 7 (§§ 701 to 706).

Petitioner states he was overpaid a gross amount of approximately \$188 and a net amount of approximately \$100 per pay period. Because salary offset is based on an employee's disposable pay, see 5 U.S.C. § 5514(a)(1), the Court will consider only the net amount. Therefore, the Court finds that Petitioner was overpaid by about \$100 per pay period. Based on the 15% figure provided by HUD, the Court finds that 5% of Petitioner's disposable pay is approximately \$111.36. Consistent with Petitioner's request to cap the offset at the higher of either 5% of his net pay (\$111.36) or the amount he was overpaid per pay period (\$100), the Court will limit the amount of the offset to \$111.36 per pay period. This will still permit HUD to collect the entire debt in less than two years.

### **RULING**

Petitioner owes HUD a valid debt in the amount of \$4,131.76. To satisfy this debt, HUD may withhold no more than \$111.36 per pay period from Petitioner's pay until the debt is satisfied. The debt shall remain interest free. Petitioner is free to make lump sum payments, in all or in part, at his discretion.

So **ORDERED**,

/s/  
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J. Jeremiah Mahoney  
Chief Administrative Law Judge

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**Notice of Appeal Rights.** A person suffering legal wrong because of a final agency action, or adversely affected or aggrieved by a final agency action, is entitled to judicial review of the agency action in a court of the United States pursuant to 5 U.S.C. §§ 701 to 706.