

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

In the Matter of:

TATIANA COLBY,

Petitioner.

24-JM-0130-OH-001

September 12, 2024

DECISION AND ORDER

This matter is before the Court upon a request for hearing submitted on February 8, 2024, by Tatiana Colby (“Petitioner”), through Veronica Bobbitt, President, American Federation of Government Employees HUD Local 911 (the “Union”) pursuant to 5 U.S.C. § 5514, as implemented by 24 C.F.R. §§ 17.83 *et seq.* Petitioner, who is a federal employee with the United States Department of Housing and Urban Development (“HUD” or the “Secretary”), requests review of \$400 in Union dues withheld from her paycheck after HUD previously neglected to automatically deduct and forward those dues to the Union.

HUD claims it was required to offset the \$400 from Petitioner’s pay because payment of such dues is Petitioner’s personal obligation. HUD also denied Petitioner’s request to waive the offset, stating “collection of the debt owed would be against equity and good conscience and in the best interest of the United States Federal Government.” Petitioner and the Union, which represents Petitioner in this matter, contend that HUD must remit the dues to the Union and return the \$400 to Petitioner because HUD’s failure to forward the dues is a breach of contract.

PROCEDURAL HISTORY

On February 8, 2024, Ms. Bobbitt requested a hearing on behalf of Petitioner. On February 12, 2024, the Court ordered a hearing limited to a review of the written record. On March 4, 2024, HUD filed its *Statement of Government’s Position*, and on March 25, 2024, Petitioner filed her *Statement of Petitioner’s Position*. The record is now closed.

APPLICABLE LAW

Hearings regarding salary offset matters are conducted in accordance with 24 C.F.R. part 26, subpart A. See 24 C.F.R. § 17.89(g). Such hearings are limited to: (1) the existence or amount of the debt; or (2) the Secretary’s proposed offset schedule. See id. and § 17.91(a).

Salary offset. The Secretary is authorized to collect repayment of a debt owed by a federal employee to an Executive agency, i.e., HUD, via deductions at officially established pay intervals from the employee’s pay account. See 5 U.S.C. § 5514 and 24 C.F.R. §§ 17.83 *et seq.* Upon determining that the employee is so indebted, the Secretary must, at least 30 days prior to

the first pay deduction, provide the employee with written notice of the intent to offset the employee's salary. See 24 C.F.R. § 17.89. Thereafter, the employee may request a hearing.

Waiver of salary offset. A federal employee employed by HUD may seek to have a repayment of a debt via salary offset waived by the Secretary when the claim is an amount aggregating not more than \$1,500 and the waiver is properly made. See 5 U.S.C. § 5584. A waiver may be granted if “the authorized official determines that collection of the overpayment debt would be against equity and good conscience and not in the best interests of the United States.” § 5584(a). However, no waiver may be granted if “there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee” § 5584(b)(1).

The Secretary's review of such waiver requests is contained exclusively within the Office of the Chief Human Capital Officer (“OCHCO”). Due to the aforementioned limitations in 24 C.F.R. §§ 17.89(g) and 17.91(a), OCHCO's decisions regarding waivers are not subject to the Court's review.

Entitlement to refund. Upon grant of a waiver, the debtor is entitled to a refund of the amount of the debt repaid, if any. See § 5584(c).

FINDINGS OF FACT

On August 16, 2021, HUD hired Petitioner to work at its Chicago office. On August 25, 2021, Petitioner applied for Union membership. Her application was forwarded to HUD's Employee and Labor Relations (“ELR”) office, a unit of OCHCO. In her application, Petitioner requested automatic deduction of her Union dues from her paycheck. On August 27, 2021, ELR submitted Petitioner's application via email to OCHCO's payroll services contractor, the United States Department of the Treasury's Bureau of the Fiscal Service (“BFS”), for processing.

On August 29, 2021, Petitioner's Union membership became effective. However, in August 2022, Ms. Bobbitt requested a list of all bargaining unit employees reporting to the Chicago office, and after examination, discovered that Petitioner's name was missing. She further determined that no dues had been deducted from Petitioner since August 29, 2021, and the amount missing was \$400.00.

On August 1, 2023, the National Finance Center, which issues paychecks to HUD's employees on its behalf, sent Petitioner a bill for the missing dues. The bill listed the Petitioner's rights as an employee, including the right to request a hearing.

On or around August 14, 2023, Petitioner submitted a request to OCHCO to waive the debt. She stated she was aware of no error because she had attended Union meetings prior to the issue being uncovered and, as a new union member, was not sure how dues were paid. OCHCO stayed the alleged debt pending resolution of her request.

On January 16, 2024, OCHCO sent Petitioner a letter notifying her that her waiver request was denied. Thereafter, HUD collected the \$400 from Petitioner by offsetting that amount from her pay.

DISCUSSION

Petitioner challenges the debt, contending that fault lies with HUD for failing to automatically forward her dues to the Union. Petitioner and the Union seek for HUD to pay the Union the missing dues and return to Petitioner the amount already offset. HUD contends Petitioner is obligated to pay the debt because her waiver was denied and the Union has not released her from payment. After careful consideration, the Court finds HUD properly offset the debt from Petitioner's pay because the payment of union dues is her personal obligation from which she has not been released and OCHCO denied her waiver request.

I. Union Dues Are Petitioner's Obligation.

As discussed previously, the Court is limited to: (1) determining the existence or amount of the alleged debt; and/or (2) reviewing the Secretary's proposed offset schedule. See 24 C.F.R. § 17.91(a). Here, there is no dispute HUD failed to automatically deduct Petitioner's dues and forward them to the Union. However, the payment of her dues remains her personal obligation unless HUD waives collection of the dues. See Dep't of Lab. - Union Dues Allotments - Unfair Lab. Prac. Settlement, 60 Comp. Gen. 93, (Nov. 28, 1980) (finding, unless the agency waives collection from an employee, payment of missing union dues is the employee's personal obligation even when the agency inappropriately terminated deduction of the dues and reimbursed the union).

Petitioner and the Union argue the aforementioned decision is limited to matters when union dues are inappropriately terminated, not when the agency failed to initiate deduction of dues. That argument is unconvincing because both circumstances present the same core issue – whether a government agency that failed to deduct union dues from an employee's pay can remit those dues to the union without also collecting from the employee.

Petitioner and the Union further argue that only HUD should be liable for the dues because HUD breached its contractual obligations with the Union by failing to remit the dues accurately and promptly. However, this too does not overcome Petitioner's personal obligation to pay the dues unless waived by HUD. Thus, as HUD has denied Petitioner's waiver request and the Union has not released Petitioner from payment of her dues, HUD appropriately offset the debt from Petitioner's pay.

II. Petitioner's Waiver Request Was Denied.

As noted, *supra*, the Court lacks jurisdiction to rule on OCHCO's denial of Petitioner's waiver request. Therefore, HUD's decision to offset Petitioner's pay is upheld. However, it is necessary to point out a fundamental error in OCHCO's letter to Petitioner denying her a waiver.

As described previously, pursuant to 5 U.S.C. § 5584(b)(1), a debt may not be waived if there was fraud, misrepresentation, fault, or lack of good faith by Petitioner, but may be waived if collection "would be against equity and good conscience and *not* in the best interests of the United States." 5 U.S.C. § 5584(a), (emphasis added). As explained below, OCHCO misinterprets § 5584(a) and fails to justify its decision.

Initially, OCHCO's letter correctly identifies that fault is at issue - whether Petitioner knew or should have known her dues had not been deducted. However, OCHCO makes no finding of fault. Rather, OCHCO abruptly denies her request, stating conclusively, "collection of the debt owed would be against equity and good conscience and in the best interest of the United States Federal Government." Obvious contradictions aside, OCHCO's omission of the word "*not*" fundamentally skewed the meaning of § 5584(a). Instead of determining whether collection goes "against equity and good conscience" - i.e., harm caused to the employee - the omission encourages OCHCO to look at the best interest of HUD.¹ Clearly, it would be hard to find a circumstance when it would not be in the best interest of an agency to collect a debt.² Lastly, OCHCO avoids any explanation of its cryptic and invented statement, leaving Petitioner with no understanding of its decision and denying any employee seeking a waiver of a intended salary offset the opportunity to predict the outcome of a request.

Unfortunately, this is not the first time the Court has felt it necessary to speak out regarding OCHCO's review of waiver requests. See In re Bonita G. Renner, HUDOHA 18-AF-0087-OH-002 (April 2, 2019) (in denying Petitioner's request to waive repayment of insurance premiums erroneously deducted by OCHCO, no analysis of how collection of the debt was being executed with equity and good conscience, or why it was in the best interest of HUD and the federal government); In re Linda Hooks, HUDOHA 20-AF-0069-OH-001 (August 20, 2020) (failing to address any of Petitioner's arguments in response to waiver request). See also In re Steven Rawlins, HUDOHA 20-AF-0017-OH-002 (July 31, 2020) and, most recently, In re Hernandez, HUDOHA 23-JM-0130-OH-002 (June 3, 2024).

OCHCO's adjudication of these waiver requests raises serious concerns and further supports the argument that waiver requests decided "in-house" should be reviewable by another office.³ Accordingly, although the Court recognizes HUD's delegation to OCHCO of sole and exclusive discretion and judgment in determining the disposition of Petitioner's waiver request, were it in the Court's purview, which it is not, this matter would be remanded to OCHCO to properly apply 5 U.S.C. § 5584 and provide supporting analysis.

¹ Related matters also support an employee-centric viewpoint of § 5584. See, e.g., Garnette F. Miller-Waiver of Erroneous Payments, B-221672 (Oct. 16, 1986) (suggesting a waiver may be granted when an erroneous payment occurred through administrative error, as long as the matter was brought to the attention of the appropriate officials).

² The Court is concerned that OCHCO may not act as a disinterested party when reviewing waiver requests, especially when the request arises as a result of OCHCO's own mistake. Such situations present an appearance of conflicting interests and a lack of unbiased due process.

³ One solution would be for the Secretary to delegate the authority to grant or deny waivers to the Office of Hearings and Appeals, as the United States Department of Education has done within its department. See U.S. DEPARTMENT OF EDUCATION, ADMINISTRATIVE COMMUNICATIONS SYSTEM, Handbook for Processing Salary Overpayments (Handbook, ACS-OM-04), p. 7 (revised January 2012). See also <https://oha.ed.gov/salary-overpayment-matter/> ("The Office of Hearings and Appeals . . . is responsible for making determinations on the timeliness of . . . waiver requests, . . . issuing rulings on waiver requests and developing policies for the efficient processing of waiver . . . requests.") (last visited September 6, 2024).

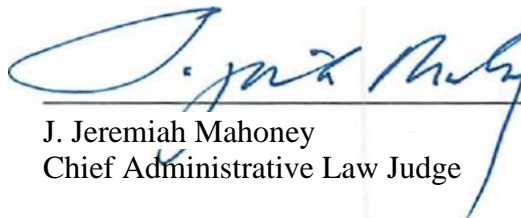
ORDER

The Court is not authorized to determine that HUD's claim, as decided by OCHCO, is other than valid and legally enforceable in the amount of \$400. Accordingly, it is:

ORDERED that the Secretary's offset of the \$400 debt from Petitioner's paycheck was appropriate. It is:

FURTHER ORDERED that the Order imposing a *Stay of Collection Proceedings* in this matter is **VACATED**.

So **ORDERED**.



J. Jeremiah Mahoney
Chief Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. §§ 26.25(f) and 26.26. This Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review and the required brief must be received by the Secretary within 30 days after the date of this Order. An appeal petition shall be accompanied by a written brief, not to exceed 15 pages, specifically identifying the party's objections to the *Initial Decision and Order* and the party's supporting reasons for those objections. Any statement in opposition to a petition for review must be received by the Secretary within 20 days after service of the petition. The opposing party may submit a brief, not to exceed 15 pages, specifically stating the opposing party's reasons for supporting the ALJ's determination, or for objecting to any part of the ALJ's determination.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Hearings and Appeals.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 26.26(m).

Judicial review of final decision. After exhausting all available administrative remedies, any party adversely affected by a final decision may seek judicial review of that decision in a United States Court of Appeals. A party must file a written petition in that court within 20 days of the issuance of the Secretary's final decision.