

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
James A. Janus,)	Date: July 17, 2007
)	
Petitioner,)	Docket No. C-07-328
)	Decision No. CR1624
v.)	
)	
Social Security Administration.)	

DECISION

Petitioner received an overpayment of pay in the amount of \$781.44, on August 1, 2001, by a direct deposit to his checking account with Wells Fargo Bank and was indebted to the United States in that amount. The debt has been fully collected.

I. Background

Petitioner, James A. Janus, requested by letter dated March 19, 2007, review of an overpayment from 2001 alleged by the Social Security Administration (SSA). According to Petitioner's request for review, his federal tax refund for 2005 was "confiscated" by the Financial Management Service, U.S. Treasury (the Treasury). An April 7, 2006 letter from the Treasury that Petitioner provided, shows that Petitioner's entire tax refund of \$483 was applied to a debt Petitioner owed. The Treasury letter does not reveal the name of the creditor for whom the debt was collected or the source of the debt. The request for review was received at the Civil Remedies Division of the Departmental Appeals Board (DAB) on March 26, 2007 and assigned to me for hearing and decision on March 28, 2007.

On April 25, 2007, I issued an Order To Show Cause for why this case should not be dismissed. I further ordered, in the event that SSA agreed to and/or requested my review of this matter, that SSA file a complete copy of its records related to this debt and to advise me whether an existing Interagency Agreement between the DAB and the SSA be applied to this case. I further provided that Petitioner could file any additional evidence or argument in response to the records and argument submitted by SSA. On May 16, 2007, I granted an SSA request for an extension of the time to respond to my Order To Show Cause and also extended the period for Petitioner to respond.

On May 17, 2007, SSA filed its response to the Order To Show Cause (SSA Brief) and the agency record related to the debt marked as exhibits 1 through 10 (SSA Exs.). On May 24, 2007, Petitioner filed his letter in reply to the SSA filing (P. Brief).

II. Discussion

A. There is authority or jurisdiction for my review of the alleged debt.

Petitioner alleges in his request for review that the Treasury collected his 2005 tax refund to satisfy a claim by SSA that he was overpaid while employed by SSA. Petitioner enclosed with his request for review documents reflecting that SSA notified him on March 12, 2002, that he was overpaid \$781.44 while employed by SSA. Petitioner indicates in his request for review, and the March 12, 2002 SSA letter also shows, that he was no longer employed by SSA when notified of the debt. A letter from Petitioner to the SSA Office of Finance, dated March 20, 2002, reflects that he contested the alleged overpayment of pay in the amount of \$781.44 and submitted documents in support of his allegations. Documents Petitioner submitted with his request for review do not include any response from SSA to Petitioner's March 20, 2002 letter.

Based upon the facts alleged by Petitioner and the documents he submitted, it is apparent that this matter does not involve an offset against federal salary, which would be subject to the requirements of 5 U.S.C. § 5514. Further, this matter does not involve an administrative wage garnishment that would be subject to 31 U.S.C. § 3720D and 31 C.F.R. § 285.11. Rather, this matter involves an administrative offset subject to 31 U.S.C. §§ 3711 and 3716 and the Commissioner's regulations at 20 C.F.R. §§ 422.301, 422.310, and 422.317. The statute and the regulations establishing the SSA procedure for administrative offset do not accord a debtor a right to hearing or review by an administrative law judge. As a threshold matter, it was important to determine whether I have jurisdiction or authority to conduct the review requested by Petitioner and to issue a ruling, order, or decision with any effect. Hence, I issued the Order To Show Cause.

The Commissioner has provided by regulation, consistent with the requirements of 31 U.S.C. §§ 3711 and 3716, a procedure to be followed before an alleged debt may be referred to the Treasury for administrative offset. Pursuant to 20 C.F.R. § 422.310(b) (April 1, 2001), before a debt is referred to the Treasury for administrative offset, notice will be given to the debtor. The notice is to advise the debtor: of the amount of the debt that it is overdue; that the debt will be referred for administrative offset within 60 calendar days after the date of notice unless paid or challenged by the debtor; that the debtor may inspect or copy records related to the debt; that the debtor may request that SSA review the debt by submitting evidence to show he or she does not owe all or part of the debt or that SSA cannot collect it; and that the debtor may request an installment plan. The review is prescribed by 20 C.F.R. § 422.317(b) and (c). If the debtor requests review and submits evidence, the regulation provides that SSA will not attempt to effectuate administrative offset until it has considered all the evidence and sent the debtor findings that the debt is overdue and enforceable. The regulation provides that findings shall be written; include a supporting rationale; and will be the final agency action on the debtor's request for review. The regulation does not specify by whom the SSA review is to be conducted.

In its submission dated May 17, 2007, SSA requests that I not dismiss Petitioner's request for review and that I determine that SSA's debt claim against Petitioner was valid. SSA cites an Interagency Agreement between SSA and the DAB dated December 7, 2006 (SSA Ex. 10) as authorizing the DAB to decide Petitioner's request for review. The agreement specifically refers to DAB review of certain enumerated appeals by states and to final written determinations involving SSA employee debt determinations affecting non-bargaining unit employees. In this case, there is no dispute that Petitioner is a former SSA employee. It is alleged that the debt arose from an overpayment of pay during the period of employment. While a strict reading of the interagency agreement may cause me to conclude that it has no application to this case, in interpreting agreements I consider the interpretation of a party to the agreement weighty, particularly in the absence of contrary interpretations. Thus, I conclude it appropriate to exercise authority to review this case as authorized by the agreement.

SSA does not advise me of any statutory or regulatory source for Petitioner's due process rights. After review of the evidence and arguments of the parties, I am satisfied that this matter involves an administrative offset subject to 31 U.S.C. §§ 3711 and 3716 and the Commissioner's regulations at 20 C.F.R. §§ 422.301, 422.310, and 422.317. The statute and the regulations establishing the SSA procedure for administrative offset do not accord a debtor a right to hearing or review by an ALJ. Nevertheless, I recognize that within the Commissioner's authority to promulgate regulations under statutes he has authority to authorize specific procedures in a particular case or class of cases. Certainly, Petitioner should not be heard to complain that he is granted more due process than would be

accorded under the applicable statute and regulations. In this case, SSA requests that I conduct a review of the evidence and issue a decision. I have granted both parties the opportunity to present documentary evidence and arguments prior to my review and decision. I find no requirement to conduct an oral hearing in this case. Accordingly, I conclude that I do have jurisdiction to render a decision in this case. Absent any further action by the Commissioner, this decision shall be treated as the final agency action in this matter.

B. Petitioner was indebted to the United States in the amount of \$781.44 due to an overpayment of pay on or about August 1, 2001.

In his request for hearing dated March 19, 2007, Petitioner alleges that SSA's claim is related to his first payment of pay as an employee of SSA in San Diego. According to Petitioner, he did not receive his first paycheck and he had to request a new one. Petitioner further alleges that his first pay was actually by direct deposit and that he was never "handed" a paycheck. Request for Hearing. He requested return of his pay and an apology. SSA's records reveal that Petitioner's recollection of the facts may be faulty.

SSA has provided a letter dated July 7, 2006, addressed to Petitioner at apartment 4-G, 140 Walnut Street in San Diego. SSA Ex. 3. The address on the letter is the same as the forwarding address on the Notification of Personnel Action dated September 28, 2001, which reflects that Petitioner was terminated from government service. SSA Ex. 2. The address on the letter is not the same as the return address on Petitioner's request for hearing or the Treasury letter attached to the notice of hearing that advised Petitioner of the administrative collection. Thus, it is credible that Petitioner did not receive the July 7, 2006 SSA letter and that he was not aware of evidence in SSA's possession prior to filing this request for hearing.

Attached to the SSA letter to Petitioner dated July 7, 2006, is a copy of the face and verso of a United States Treasury check, dated July 24, 2001, in the amount of \$781.44, with Petitioner's name and address at apartment 4-G, 140 Walnut Avenue, San Diego, and the notation "salary." By comparing the signature on the request for hearing with that on the back of the check, it is clear that Petitioner signed both. Banking marks on the back of the check show that it was presented to the Wells Fargo Bank on July 24, 2001, and that it was further processed by the Federal Reserve Bank in San Francisco on August 1, 2001. SSA Ex. 3, at ii. Petitioner provided with his request for hearing copies of bank statements from an account with Wells Fargo Bank with his name and the address 140 Walnut Avenue, apartment 4-G, San Diego. The statement dated August 14, 2001, reflects a deposit on July 24, 2001, in the amount of \$766.44, \$15 less than the amount of the United States Treasury check dated July 24, 2001. Request for Hearing; SSA Ex. 1, at x. SSA has also submitted a leave and earnings statement for the pay period that ended

on July 14, 2001, which shows that a check in the amount of \$781.44 was to be mailed to Petitioner's home address, apartment 4-G, 140 Walnut Avenue, San Diego. SSA Ex. 1, at i. The evidence supports my conclusion that Petitioner did, in fact, receive, negotiate, and deposit most of the proceeds of the United States Treasury check issued in the amount of \$781.44, as alleged by SSA.

The bank statement provided by Petitioner dated August 14, 2001, also reflects a direct deposit on August 1, 2001, of "federal salary" in the amount of \$781.44. Petitioner admits in his request for hearing that this direct deposit payment was a substitute payment for the first pay check that he allegedly never received. SSA argues that the issuance and negotiation of the Treasury check and the duplicate direct deposit to Petitioner's bank account, both in the amount of \$781.44, resulted in the overpayment of pay and debt to the government in the amount of \$781.44. SSA Brief at 2, 7. SSA states that \$396.05 was recovered from Petitioner's final pay after his termination from government employment. SSA Brief at 3; SSA Ex. 1, at viii. SSA sent Petitioner a letter dated March 12, 2002, addressed to him at 140 Walnut Avenue, apartment 4-G, San Diego, California. The letter advised Petitioner that during his employment with SSA he incurred a payroll overpayment in the amount of \$781.44 and demanded payment of the entire amount. The demand advised Petitioner that if he failed to pay he would be liable for interest and costs of collection; that the debt could be withheld from any federal payments due him such as a tax refund; that he could enter a repayment plan; that he could inspect and copy SSA records related to the debt if he requested to do so; that he could present evidence and challenge the alleged debt; that, upon challenge, SSA would conduct a review and respond to Petitioner; and that he could seek waiver of the alleged debt. SSA Ex. 5. The demand for payment was obviously in error as it did not account for the \$396.05, previously collected from Petitioner's final pay. SSA concedes that the demand should have been for payment of only \$385.39. SSA Brief at 3.

Petitioner challenged the alleged debt by a letter dated March 20, 2002. Petitioner acknowledged receipt of the March 12, 2002 SSA demand and notes that he received no documentation. Petitioner asserts in his letter that he never received a check for \$781.44 and that he requested to be paid and received a direct deposit in the amount of \$781.44. Petitioner submitted with his letter copies of his leave and earnings statements and pages from his bank statements. Petitioner did not request to inspect and copy SSA records as instructed by the demand or request a waiver of the debt. Petitioner indicates in his letter that his return address was 140 Walnut Avenue, apartment 4-G, San Diego, California. SSA Ex. 1.

According to SSA, Petitioner's debt was reviewed, audited, and processed with 500 other debt cases and sent to the Treasury for collection in September 2005. SSA Brief at 4. SSA does not assert, and provides no evidence that it ever responded to Petitioner's

March 20, 2002 letter. On April 7, 2006, the Treasury withheld \$483.00 from Petitioner's 2005 tax refund. SSA Brief at 4; SSA Ex. 7. Based upon various complaints from Petitioner including a Congressional inquiry, SSA investigated Petitioner's alleged debt. On July 7, 2006, SSA sent Petitioner a letter addressed to 140 Walnut Avenue, apartment 4-G, San Diego. SSA advised Petitioner that it had reviewed the debt; concluded that Petitioner had been overpaid \$781.44; that \$396.05 had been collected from his final pay leaving a balance due of \$385.39; that the balance due was subject to interest, penalty, and administrative fees bringing the total debt due to \$703.21; that \$483 had been collected from his 2005 federal income tax return leaving a balance of \$220.21; that SSA was waiving interest and penalties totaling \$317.82 (this amounts to all interest, penalties, and administrative fees, if any); and that \$97.61 would be refunded to Petitioner. The SSA letter also advised Petitioner that he could appeal the agency decision to the Departmental Appeals Board. SSA Ex. 3. Unfortunately, the evidence shows that Petitioner was receiving mail at an address on Hawley Boulevard in San Diego as early as April 7, 2006 (SSA Exs. 7, 8), and it is credible that he never received the July 7, 2006 SSA letter.

In his May 24, 2007 response to the SSA brief and evidence, Petitioner alleges that he did not receive the July 7, 2006 SSA letter and that he had moved to Hawley Boulevard in November 2003. Petitioner concedes that he has shredded many records and now lacks any documents with which to refute SSA's evidence. Based upon Petitioner's response, I conclude that he no longer disputes the SSA claim of overpayment of pay in the amount of \$781.44, which amount has been fully collected.

III. Conclusion

For the forgoing reasons, I conclude that Petitioner received an overpayment of pay in the amount of \$781.44, on August 1, 2001, by a direct deposit to his checking account with Wells Fargo Bank. The debt has been fully collected.

/s/

Keith W. Sickendick
Administrative Law Judge