

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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| In the Case of: |) | |
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| Durrell Knight, |) | Date: February 27, 2009 |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| - v. - |) | Docket No. C-09-126 |
| |) | Decision No. CR1911 |
| Social Security Administration, |) | |
| |) | |
| _____ |) | |

DECISION

I sustain the determination of the Social Security Administration (SSA) to garnish up to 15 percent of the wages of Petitioner, Durrell Knight in order to collect a delinquent debt of \$5,971.22 (as of October 13, 2008).

I. Background

On October 13, 2008 a collection agency, working on behalf of SSA, sent a notice to Petitioner advising her that it intended to garnish up to 15 percent of her wages in order to collect a debt from Petitioner then estimated to be \$5,971.22. Petitioner requested a hearing and the case was assigned to me for a hearing and a decision.

On December 19, 2008 I sent a pre-hearing order to the parties directing them to file proposed exhibits (including the written direct testimony of any proposed witnesses) and briefs addressing all of the issues and arguments in the case. SSA complied, filing a brief along with ten proposed exhibits which it designated as SSA Ex. 1 - SSA Ex. 10.

My order gave Petitioner until January 31, 2009 to file her exchange in response to SSA's pre-hearing exchange. Petitioner failed to comply with this deadline. At my direction Civil Remedies Division staff contacted Petitioner and advised her that I would extend her deadline, but only until February 17, 2009. On that date Petitioner faxed a letter to the Civil Remedies Division. I am designating that letter as P. Ex. 1. I receive into evidence SSA Ex. 1 - SSA Ex. 10 and P. Ex. 1.

II. Issues, findings of fact and conclusions of law

A. Issues

This is a case in which SSA seeks to garnish Petitioner's wages pursuant to the authority of 31 U.S.C. section 3720D and implementing regulations at 31 C.F.R. § 285.11 and 20 C.F.R. Part 422, Subpart E. In addition, SSA relies on 5 C.F.R. § 630.209(a), which states that where a federal employee separates from an agency with an unearned (advanced) leave balance, that employee must refund the amount or deduct the indebtedness from any pay due him or her.

The issue in this case is whether the existence and amount of the debt alleged by SSA, based on Petitioner's balance of advanced sick and annual leave, are valid.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

1. Petitioner has not provided sufficient grounds for me to convene an in-person hearing.

In her hearing request and in subsequent correspondence Petitioner asked that I convene an in-person hearing so that she could testify concerning the facts of this case. However, Petitioner has not provided me with any basis for me to do so. She has not submitted written direct testimony made under oath, as I directed her to do in my December 19, 2008 pre-hearing order. Nor has she expressed any interest in cross-examining the affiant whose testimony was offered by SSA. *See* SSA Ex. 10. And, Petitioner has not suggested that she would offer testimony separate and apart from the documents in evidence that are relevant to any issue that I have the authority to hear and decide.

2. The evidence establishes that Petitioner is indebted to SSA in the amount of \$5,971.22 (as of October 13, 2008).

SSA offered evidence establishing the following facts. Petitioner was an SSA employee until December 1, 2006. Upon separation Petitioner had a negative (or advanced) sick leave balance of 202.75 hours and a negative annual leave balance of 1.75 hours. SSA Ex. 1. In other words, as of the date of her separation from SSA, Petitioner had been advanced sick leave and annual leave in the amounts that I have described and had not repaid SSA for the advanced leave. As of the date of separation, the total value of the advanced leave, measured in terms of payments to Petitioner that had not been refunded, was \$4,306.35. SSA Ex. 2. This amount has grown with the passage of time and the accrual of interest on the unpaid debt, to \$5,971.32 as of October 13, 2008, the date of SSA's notice to Petitioner.

In her hearing request Petitioner asserts that she is not aware of any indebtedness to SSA, claiming that, at the time of her separation she was told by an SSA employee that the value of any and all advanced leave balances would be subtracted either from her last pay check or from her thrift savings account plan. SSA Ex. 8, at 1. Petitioner also claimed that SSA's calculation of her advanced leave was incorrect, asserting that the total balance of advanced leave that had been given to her was 124 hours and not that which is alleged by SSA. Petitioner bases this assertion on a statement that she received from SSA on April 4, 2008. SSA Ex. 8, at 2.

I find neither of Petitioner's arguments to be substantiated. She offered no evidence to prove that SSA deducted money from either her final pay check or from her thrift savings account as recompense for Petitioner's advanced leave balance. As for the issue of the amount of advanced leave the weight of the evidence supports a conclusion that the total is as alleged by SSA. The document relied on by Petitioner is a statement that was issued for a purpose other than to provide her with a complete accounting of her unpaid leave. It was issued to document a bond refund. SSA Ex. 8, at 2. SSA explained credibly, that the advanced leave balance of 124 hours on that statement is only a portion, and not the total amount of, the leave advanced to Petitioner by SSA. SSA Ex. 2, at 1; SSA Ex. 10. Petitioner has not adduced any evidence of her own to prove that SSA's calculations are in error.

Petitioner offered no evidence to challenge the dollar value of SSA's calculation of the amount of the indebtedness. I therefore accept the total indebtedness amount calculated by SSA based on SSA's valuation of the leave advanced to Petitioner.

3. I am without authority to consider Petitioner's claims of hardship.

The gravamen of Petitioner's argument is that it would be unfair for SSA to garnish her wages. She asserts that she is presently employed in a job which pays her less than she earned while at SSA and that she needs her entire income to pay her bills. P. Ex. 1. Consequently, according to Petitioner, garnishment of her wages would work an unreasonable hardship on her. *Id.*

I have no authority to hear and decide this argument. Both the federal statute and regulations governing wage garnishment make it plain that I may only consider a hardship argument where an individual debtor has previously established a repayment schedule with the agency seeking repayment of a debt. 31 U.S.C. section 3720D(b)(5); 31 C.F.R. § 285.11(f)(2).

Petitioner never entered into a repayment schedule with SSA. The undisputed evidence is that Petitioner failed to respond to notices sent to her by SSA which offered her the opportunity to enter into a repayment plan. SSA Ex. 4, at 2; SSA Ex. 7, at 1. Indeed, the record shows that Petitioner failed to respond to any of SSA's requests that she repay her debt.

/s/

Steven T. Kessel
Administrative Law Judge