

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Petra A. Illig, M.D.,

Petitioner,

v.

Department of Health and Human Services.

CRD Docket No. C-12-516

Decision No. CR2559

Date: June 22, 2012

DECISION AND ORDER

Petitioner requested reconsideration of a determination denying Petitioner's request for waiver of a debt owed to the Department of Health and Human Services (DHHS). Because I do not have jurisdiction to reconsider that determination, I am returning this case to the DHHS office that denied her waiver request. That office should forward Petitioner's request for reconsideration to the appropriate DHHS official who has authority to reconsider the denial of the request for waiver.

Petitioner has been employed by the Centers for Disease Control and Prevention since 2007 as a Quarantine Medical Officer in Anchorage, Alaska.¹ On May 2, 2011, DHHS informed Petitioner in an e-mail that DHHS overpaid Petitioner \$6,372.80 due to an erroneous cost of living adjustment calculation made in 2010. In a July 16, 2011 letter, the Defense Finance and Accounting Service, which is the payroll service for DHHS employees, *see Qin Ryan, M.D., Ph.D.*, DAB CR1970, at 1 (2009),² also notified

¹ The facts stated in this decision are based on the documents that Petitioner filed with the Civil Remedies Division (CRD) of the Departmental Appeals Board (DAB).

² DAB decisions are available at <http://www.hhs.gov/dab/decisions/index.html>.

Petitioner of the overpayment. On or about August 1, 2011, Petitioner filed a Waiver/Remission of Indebtedness Application (DD Form 2789) with DHHS.

On November 30, 2011, Gerald Hughes, a supervisor with DHHS's Payroll Liaison Services, issued a determination denying Petitioner's waiver request. Mr. Hughes advised Petitioner that she could file a reconsideration request with the General Counsel. However, rather than providing an address for the Office of the General Counsel (OGC), Mr. Hughes directed Petitioner to send the request to the CRD's mailing address.³

The CRD received Petitioner's request, dated March 19, 2012, on March 28, 2012. On April 3, 2012, the CRD sent a notice to Petitioner and to OGC indicating that another administrative law judge was assigned to Petitioner's case. By letter dated June 8, 2012, the CRD notified the parties that this case was reassigned to me.

Before adjudicating the merits of this matter, I must determine whether I have jurisdiction to reconsider the denial of a debt waiver request. *Cf. Suzanne R. Bergman*, DAB CR1282 (2005) (dismissing salary overpayment case for lack of jurisdiction). For the reasons stated below, I conclude that I do not have jurisdiction.

When a federal agency intends to collect a salary overpayment through deductions from an employee's pay, the employee has two distinct, but not mutually exclusive methods of seeking relief from the agency's intended action. The employee may request a hearing on the existence or amount of the alleged debt and may request waiver of the debt. *See* 5 U.S.C. §§ 5514(a)(2), 5584(a). Cases involving a request for hearing must be adjudicated by an administrative law judge or an individual who is not under the supervision or control of the head of the agency. 5 U.S.C. §§ 5514(a)(2). In contrast, a request for waiver does not have to be adjudicated by an administrative law judge. *See* 5 U.S.C. § 5584(a). Therefore, while CRD administrative law judges serve as hearing officials when a debt is disputed, they are not specifically authorized to adjudicate requests for waiver of a debt. *See* 45 C.F.R. §§ 33.1, 33.2, 33.6 (2011); *see also Qin Ryan, M.D., Ph.D.*, DAB CR1970, at 1 n.1 (2009).⁴

³ The entire mailing address provided to Petitioner was: Civil Remedies Division, Office of the Secretary, Department [sic] Appeals Board, Attention: Mr. Theodore Kim, 330 Independence Avenue, S.W., Cohen Building, #G-644, MS-6132, Washington, D.C. 20201.

⁴ Under the regulations in effect before March 8, 2007, an administrative law judge adjudicating a dispute concerning the existence or amount of a debt could also decide an employee's waiver request if DHHS referred that request to the administrative law judge for decision. *See* 45 C.F.R. § 30.15(p) (2006); *Alfred H. Varga*, DAB CR342, at 1-3 (1994). However, that provision no longer exists. *See* 72 Fed. Reg. 10,404 (Mar. 8, 2007); 72 Fed. Reg. 10,419 (Mar. 8, 2007).

Because there is no evidence that Petitioner filed a timely request for hearing on the issue of her indebtedness to DHHS and is only disputing DHHS's denial of her waiver request, I do not have jurisdiction over this case.

Order

This case is dismissed. Petitioner's request for reconsideration of DHHS's denial of her waiver request is hereby referred to Mr. Gerald Hughes at Payroll Liaison Services to determine which DHHS official has the authority to entertain Petitioner's request.⁵ *See Lisa Meegs Joldersma*, DAB CR1184 (2004). Mr. Hughes should then forward Petitioner's request for reconsideration to that official.

It is so ordered.

/s/
Scott Anderson
Administrative Law Judge

⁵ It appears that OGC may have authority to reconsider the denial of waiver requests. *See Linda J. Adams*, DAB CR324, at 12 n.2 (1994). The November 30, 2011 letter denying Petitioner's request for waiver indicated that Petitioner should submit a reconsideration request to OGC. The petitioner in *Suzanne R. Bergman*, DAB CR1282 (2005), was provided with the same notice. Further, the instructions to Form HHS-710 (Request for Waiver of Overpayment or Hearing DHHS) indicate that OGC has a role in the waiver process.