

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Doris Klein,

Petitioner.

v.

Social Security Administration.

Docket No. C-11-531

Decision No. CR2459

Date: November 2, 2011

**DECISION**

Petitioner, Doris Klein, is indebted to the United States in the amount of \$5,468.75, plus any interest, penalties, fees, and costs. The debt may be collected by administrative wage garnishment (AWG), by administrative offset, or in any other manner permitted by law.

**I. Jurisdiction**

The Department of the Treasury (Treasury), Financial Management Service, notified Petitioner by a "Notice of Intent to Initiate Wage Garnishment" dated April 27, 2011 (Notice) that she was indebted to the Social Security Administration (SSA) in the amount of \$8,030.65. The Notice advised Petitioner that if she did not pay her debt or enter a repayment plan by May 27, 2011, Treasury would issue a wage garnishment order to Petitioner's employer to collect the debt by deduction of up to 15 percent from her disposable pay per pay period until the debt is paid in full. The Notice advised Petitioner that she had the right to inspect records related to the debt and to request a hearing by May 18, 2011. SSA Exhibit (SSA Ex.) 9. On May 19, 2011, Petitioner requested a hearing. SSA Ex. 11.

On June 20, 2011, the Civil Remedies Division (CRD) of the Departmental Appeals Board (DAB), Department of Health and Human Services, received Petitioner's hearing

request. The hearing request was forwarded to the CRD, attached to a letter, dated June 6, 2011, from Edwina Bailey, Financial Management Analyst, Debt Management Team, SSA. The request for hearing was forwarded to the DAB for hearing and decision pursuant to an interagency agreement under which SSA refers cases involving the collection of debt from certain current SSA employees not represented by the American Federation of Government Employees (AFGE) and separated SSA employees (Interagency Agreement, ¶ I.B).

The matter was assigned to me for hearing and decision on June 21, 2011.

On June 23, 2011, I issued an Order to File Evidence and Written Argument. I advised the parties that it was not clear from the documents submitted by SSA whether or not Petitioner was a current or former SSA or federal employee. I ordered SSA to answer, by July 9, 2011, five questions regarding Petitioner's status, as well as answer whether Petitioner's hearing request was timely filed. I required SSA to file by July 25, 2011, any documents upon which it relied to show the existence of the debt that Petitioner owed. Petitioner was given until August 25, 2011, to respond and submit documents and argument regarding the existence of the indebtedness or any other defense.

On July 8, 2011, SSA timely responded that Petitioner was not currently a federal employee and not currently an SSA employee or a member of a collective bargaining unit represented by AFGE. SSA also responded that Petitioner's hearing request was not timely filed. SSA did not explain its position that Petitioner's request for hearing was not timely filed, though I note that the date on the hearing request is one day after the deadline for filing a hearing request set by the Treasury Notice. SSA did not address the issue of untimely filing in its brief or otherwise assert that untimely filing deprived me of jurisdiction. The Interagency Agreement (¶ II.A.12), requires that I apply the SSA debt collection regulations at 20 C.F.R. Part 422 when reviewing requests for hearing related to debt collections from former SSA employees, excluding Social Security program debt which is not within my jurisdiction under the Interagency Agreement. Pursuant to SSA debt collection regulations governing administrative offset and AWG, the debtor has 60 days to request review of an alleged debt, except when offset against federal salary is proposed, in which case review must be requested in 30 days. 20 C.F.R. §§ 422.425(a), 422.310(c)(3)(ii) and (c)(6). AWG is proposed by SSA in this case not administrative offset and the 60-day period applies. The Treasury Notice is dated April 27, 2011, and Petitioner's hearing request was faxed to Treasury on May 19, 2011, well within the 60 days provided by SSA regulations for collection of a debt from a former government employee. Accordingly, I conclude that Petitioner's request for hearing was timely filed. If Petitioner's request for hearing was not timely filed, SSA regulations require that the debt be reviewed but the regulation does not require that SSA stay its collection action pending completion of my review. 20 C.F.R. §§ 422.317(a)(2), 422.425(a). I conclude, based upon evidence submitted by SSA, that Petitioner is a former SSA employee and this case is not subject to the requirements of 5 U.S.C. § 5514 (which applies only to

offset of the federal salary of a current federal employee). I also conclude that this case is properly subject to my review pursuant to the Interagency Agreement.

On July 22, 2011, SSA timely filed its brief (SSA Br.) with SSA Exs. 1 through 11. No response has been received from Petitioner. Therefore, on September 6, 2011, I issued an order for Petitioner to show cause by September 21, 2011 why her request for hearing should not be dismissed for abandonment or why I should not proceed to a decision based upon SSA's filings. No response has been received from Petitioner. I proceed to a decision based upon the current record. SSA Exs. 1 through 11 are admitted without objection from Petitioner.

## **II. Discussion**

### **A. Issues**

Whether Petitioner is indebted to the government and, if so, in what amount;  
and

Whether collection of any debt may be accomplished by AWG or  
administrative offset?

### **B. Law Applicable**

The Interagency Agreement provides that debt collection cases against separated SSA employees are governed by 20 C.F.R. Part 422. Administrative offset procedures are at 20 C.F.R. §§ 422.310, .315, and .317. AWG procedures are at 20 C.F.R. § 422.401 through .445.

Before collection of any debt by administrative offset the alleged debtor must be given written notice which explains: (1) the nature and amount of the debt; (2) that SSA has determined the debt is overdue; (3) that the debt will be referred to Treasury for offset after either 30 days from the date of the notice in the case of proposed federal salary offset or 60 calendar days from the date of the notice for all other proposed offsets, unless the debt is paid in full, the debtor enters an installment payment plan, or the debtor requests review of the debt; and (4) that the debtor has the right to review SSA records related to the alleged debt. The regulations recognize that 5 U.S.C. § 5514 controls in a case involving administrative offset against the federal salary of a current federal employee. 20 C.F.R. § 422.310(c). If SSA seeks to recover a debt using AWG, the debtor must be notified of: (1) the nature and amount of the debt; (2) that SSA has determined the debt is past due; (3) the payment schedule or the amount the employer may withhold from disposable pay each payday; (4) that the debtors employer will be ordered to withhold money from the debtors pay not sooner than 60 days from the date of the notice, unless the debtor enters an installment payment agreement or requests review

of the debt or the repayment schedule stated in the notice; and (5) that the debtor may inspect and copy records related to the debt. 20 C.F.R. § 422.405(b).

The debtor is required to submit evidence with the request for review showing that the debt is not owed or that SSA has no right to collect the debt. 20 C.F.R. §§ 422.310(c)(6), 422.405(b)(6), 422.425(a). SSA stays collection of the debt by administrative offset or AWG, if a request for review is timely filed. 20 C.F.R. §§ 422.317(a)(1), 422.425(a).

### **C. Findings of Fact, Conclusions of Law, and Analysis**

My conclusions of law are set forth in bold followed by a statement of the pertinent facts and my analysis.

- 1. Petitioner is indebted to the government in the amount of \$5,468.75, plus any interest, penalties, fees, and costs.**
- 2. Petitioner received adequate notice of the debt and her rights.**
- 3. Collection by administrative offset or AWG is permissible.**

#### a. Facts

The un rebutted evidence shows that SSA removed Petitioner from her position as a Contact Representative effective September 1, 2006, due to her numerous incidents of absence without leave (AWOL). SSA Ex. 1. A Leave and Earning Statement (LES) for the period ending September 2, 2006, the day after her termination, shows that when she was fired Petitioner had been advanced 68 hours of annual leave and 232 hours of sick leave, leaving her with a total negative leave balance of 300 hours when she was terminated. SSA Ex. 2. The evidence shows that Petitioner was advanced 68 hours of annual leave in May 2006 and June 2006, pay periods 12 and 13. The evidence shows she was advanced 135.25 hours of sick leave in 2005 and 96.75 hours of sick leave in April and May of 2006, pay periods 10 and 12. SSA Ex. 3. In November 2006, SSA's payroll provider computed the monetary value of Petitioner's 300 hours of advanced sick and annual leave to be \$5,468.75. SSA Ex. 4.

The evidence presented by SSA includes a November 2, 2007 letter from SSA to Petitioner at the address listed on her LES from September 2, 2006. The SSA letter notified Petitioner that she was indebted to SSA in the amount of \$5,468.75; that if payment was not made interest and other charges would be assessed; and that collection could be by AWG or administrative offset. The SSA letter offered Petitioner four options to avoid referral of the debt to Treasury for collection, she could: pay the full amount of the debt; enter a repayment plan and repay according to the plan; provide evidence to show she did not owe the debt or that SSA did not have the right to collect it; or request

a waiver of the debt. SSA also advised her that she had a right to review of the debt and a right to inspect SSA's records regarding the debt. SSA Ex. 5.

The evidence includes a letter dated March 24, 2008, from SSA to Petitioner, which was also sent to the address indicated on Petitioner's LES. The SSA letter advised Petitioner that because she had not responded to the November 2, 2007 letter, her debt was delinquent. The letter advised Petitioner that, if she failed to pay her debt within 15 days, her debt would be referred to Treasury for offset of any future payments that might be due her from the government. SSA Ex. 7. The debt was referred to Treasury on about August 22, 2008. The amount of the debt referred for collection was \$5,468.78, plus \$158.22 in interest and a penalty of \$237.33, a total debt of \$5,864.33. According to SSA, the interest rate applicable is four percent and the penalty rate is six percent. SSA Ex. 8.

The Treasury letter dated April 27, 2011, which was sent to a different address than that on Petitioner's September 2, 2006 LES, shows that the debt had increased to \$8,030.65. SSA Ex. 9. As of July 6, 2011, the debt had increased to \$8,168.94, which included the principal of \$5,468.78 and \$2700.16 in interest, penalties, and fees. SSA Ex. 10.

#### b. Analysis

Petitioner failed to submit any evidence with her request for hearing and she failed to respond to the SSA brief and evidence. Petitioner argues in her request for hearing that the Treasury Notice was the first notice she received regarding the alleged debt. She alleges that she does not owe the debt or, at least, not the entire amount. She argues that when she left SSA in 2006 any amount for advanced leave in 2005 was repaid and the remaining leave was to be collected from her Thrift Savings Plan account. She alleges that she has been at her current job for less than 12 months, following eight months of unemployment, and six months of unemployment in the previous year. SSA Ex. 11.

Petitioner's assertion that the April 27, 2007 Treasury Notice is the first notice she received of the debt, is not grounds for relief, even if true. The SSA notices in evidence from 2007 and 2008, which were mailed to the address on Petitioner's last LES, raise an inference that those letters were mailed and received by Petitioner. The evidence would have been more persuasive had SSA obtained and maintained evidence of actual receipt of the notices, such as certified or registered mail receipts. But, no regulation requires that notices be sent certified or registered mail. Petitioner's mere assertion that the letters were not received is insufficient alone in this case to overcome the inference that the letters were mailed and received, particularly because Petitioner's denial is in her request for hearing which is not even signed by her. Further, the statement in her request for hearing that she believed that any amount owed for advanced leave in 2005 had been repaid and that the amount remaining was to be collected from her Thrift Savings Plan account shows that Petitioner had knowledge that she was indebted to SSA for advanced

leave. Petitioner's final LES for the pay period ending on September 2, 2006, also clearly shows that she had a negative annual leave balance of 68 hours and a negative sick leave balance of 232 hours due to advances of leave. SSA Ex. 2. Even if I accept that Petitioner had no knowledge of the amount of her debt or her rights related thereto prior to the Treasury Notice that is no grounds for any relief for Petitioner. The Treasury Notice satisfies the notice requirement under both the administrative offset regulations and the AWG regulations. SSA has given Petitioner the documents supporting the debt. Petitioner has been accorded the rights to contest the debt and for review of the debt. Accordingly, I conclude that Petitioner has been accorded all the process due her under the SSA regulations. Any defects in SSA notices caused her no prejudice as she was aware of the debt and failed to follow-up with SSA to protect herself from accruing interest and penalties. Treasury Department regulations specify the process to be accorded debtors by an agency before effectuation of either AWG or administrative offset. 31 C.F.R. §§ 285.11, 901.3. I conclude that the more extensive requirements of the Treasury Department regulations are also satisfied by the process accorded in this case.

I conclude based upon the foregoing facts that Petitioner is indebted to the government in the amount of \$5,468.75 for negative leave balances at the time of her termination totaling 300 hours due to advances of sick and annual leave. Petitioner has presented no credible evidence that she repaid any portion of the debt. Petitioner has also presented no evidence or argument that would support a conclusion that SSA has no right to collect the debt. Petitioner's debt is subject to accruing interest, penalties, and fees. The total debt, with interest, penalties, and fees, was calculated as \$ 8,030.65 on April 27, 2011 (SSA Ex. 9) and \$8,168.94 on July 6, 2011 (SSA Ex. 10). Petitioner has presented no evidence or argument to show that the calculated totals are in error.

Petitioner asserts in her hearing request that she has been at her current job for less than 12 months following eight months of unemployment, and six months unemployment in the previous year. SSA Ex. 11. I construe Petitioner's assertion to be an attempt to fit within the exceptions to the use of AWG listed in 20 C.F.R. § 422.403(b), specifically the second exemption which provides that, if a debtor was involuntarily separated from employment, SSA or Treasury will not order the new employer to withhold any amount from disposable pay until the employment has continued for at least 12 months. The regulation places the burden on the debtor to inform SSA of the involuntary separation from employment. 20 C.F.R. § 422.403(b)(2). In this case, Petitioner provided no credible evidence that she was involuntarily terminated from her last job. Petitioner has also not provided credible evidence to show when she started her current job. Accordingly, I conclude that Petitioner has not shown that the exception is applicable in her case. The other four exceptions established by the regulation also have no application to Petitioner's case, and she does not assert that they do. The administrative offset regulations do not establish exceptions like those found in the AWG regulations. 20 C.F.R. § 422.310.

Although Petitioner did not specifically argue that she was unable to pay the debt due to financial hardship, her statements that she was unemployed for a period could be construed as a statement that she cannot repay the debt due to financial hardship. The amount collected from disposable pay may be adjusted due to financial hardship. 20 C.F.R. § 422.415. The regulation requires that the individual requesting relief give evidence of his or her financial resources and expenses. The regulation also provides that an individual may ask at “any time to reduce the amount [of AWG] due to financial hardship,” although at no time will it be reduced below \$10 per payday. The April Treasury Notice did not state the amount to be deducted from monthly disposable pay by AWG as it was a notice of intent to initiate AWG and not the AWG order itself. The April Treasury Notice informed Petitioner that if she did not pay her debt or enter into a repayment plan or request a hearing an AWG order might issue to her employer that could require her employer to deduct up to 15 percent from her disposable pay each pay period until her debt is paid in full. If Petitioner has an issue of financial hardship she should address that issue with SSA and the Treasury. Financial hardship is not a basis for me to relieve Petitioner of her debt.

### **III. Conclusion**

For the foregoing reasons, I conclude that Petitioner is indebted to the government in the amount of \$5,468.75, plus any interest, penalties, fees, and costs. The debt is subject to collection by AWG or in any manner permitted by law. 31 C.F.R. § 285.11(b)(4), (b)(6).

/s/

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Keith W. Sickendick  
Administrative Law Judge