

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 May 2009

Case No.: 2008-DCA-00001

In the Matter of

TAMMY CRAVEN,
Petitioner

v.

UNITED STATES DEPARTMENT OF LABOR,
Respondent

ORDER OF DISMISSAL

This matter arises under the salary offset provisions of the Debt Collection Act, 5 U.S.C. § 5514, and the implementing regulations at 29 C.F.R. §§ 20.74-20.90. On December 19, 2007, Tammy Craven (“Petitioner”) requested a hearing before the Office of Administrative Law Judges to dispute the United States Department of Labor’s (“Respondent” or “DOL”) November 28, 2007, decision to use salary offset to recover Petitioner’s overpayment of workers’ compensation. On January 29, 2008, this Office issued a *Notice of Docketing*. On February 13, 2008, Respondent filed a motion to dismiss explaining that the Office of Workers’ Compensation Programs (“OWCP”) had not yet determined whether the overpayment could be waived. On February 26, 2008, the undersigned issued an order granting the motion and dismissing Petitioner’s hearing request as premature.

On February 9, 2009, Petitioner filed a letter in which she alleged that, following her submission of two financial reports, Respondent failed to notify her of any decision regarding the waiver determination. Petitioner further alleged that the United States Department of the Treasury has referred her debt to a private law firm, which has contacted her regarding repayment. Petitioner attached a copy of a letter from Linebarger, Goggan, Blair & Sampson, LLP, and asserted that the amount sought exceeds the original amount by \$4,003.10. Petitioner further alleged that Respondent intercepted her \$5,855.00 2008 federal income tax refund and attached a copy of a letter from the Internal Revenue Service. Petitioner requested “an appeal” because “a decision was made without the Respondent making a determination” regarding the overpayment’s waiver due to Petitioner’s financial condition.

On February 26, 2008, I issued a second *Notice of Docketing* that required the parties to complete a prehearing exchange. The notice also required the Respondent to file copies of any determination notices it has issued regarding the overpayment since the dismissal of Petitioner’s

previous appeal or, if none have been issued, a report on the status of its efforts to collect the overpayment. Last, the notice required the Petitioner to file an amended request for hearing specifically identifying which of Respondent's determinations she is appealing and the provision of law that permits this Office's review of each determination.

On March 20, 2009, Respondent filed a *Motion to Dismiss*. Noting that, at this time, it will not use salary offset to collect the overpayment debt, Respondent requested dismissal.¹ Respondent also reported that, on March 13, 2009, the Office of the Solicitor of Labor requested that OWCP make a waiver determination. On March 31, 2009, Petitioner filed two letters with attachments. The letters describe the posture of the overpayment proceedings, Respondent's collection activities, and Petitioner's financial and physical conditions. In the second letter, dated March 27, 2009, Petitioner reported that, on March 23, 2009, an OWCP claims examiner denied her request to waive the overpayment. Petitioner attached, among other documents, the determination letter.

Discussion

Since Respondent does not currently seek repayment of Petitioner's debt through salary offset, and the regulatory scheme limits my review of government employee debt to cases in which a DOL agency initiates salary offset proceedings, I will grant Respondent's dismissal motion. 29 C.F.R. Part 20, Subpart D—which is titled “Salary Offset”—implements section 5 of the Debt Collection Act of 1982, 5 U.S.C. § 5514, by providing procedures for collecting federal employees' debts to the United States through salary offset. *See* §§ 20.74, 20.75. Subpart D applies to debts “arising under” DOL programs or incurred by DOL employees. § 20.75(a). Within 15 days after receiving a DOL agency's notice of proposed salary offset, a debtor may request that an administrative law judge review the agency's “determination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency.” § 20.81; *see also* § 20.78(b)(7)-(10) (requiring notice of intent to initiate salary offset to include information about right to hearing). While § 20.81 permits review of a “determination concerning the existence or amount of the debt,” the regulatory scheme only permits this review when the creditor agency intends to collect the debt through salary offset. Subpart D's regulatory history contains nothing suggesting that the Secretary of Labor intended otherwise when promulgating the regulations. *See* 52 Fed. Reg. 3772 (Feb. 5, 1987) (Final Rule); 50 Fed. Reg. 51,354 (Dec. 16, 1985) (Proposed Rule). In the instant case, Respondent, through counsel, has stated that, at this time, it will not use salary offset to collect Petitioner's overpayment debt.²

¹ Respondent also asserted that the particular debt at issue in this case—an overpayment of compensation under the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101 *et seq.*—is not reviewable under 29 C.F.R. § 20.81(a). Since I am granting Respondent's motion on another ground, I will not address this argument.

² In its motion, Respondent acknowledged that, while Petitioner's first hearing request was pending, OWCP issued a letter, dated January 7, 2008, requesting that Petitioner's employer, the United States Postal Service (“USPS”), deduct \$240 per pay period from Petitioner's salary. Respondent explained that, in March 2008, USPS deducted \$388.86 from Petitioner's salary and forwarded the funds to OWCP, and that OWCP applied them to Petitioner's overpayment debt. Respondent concedes that OWCP wrongfully requested these deductions and that the agency should have stayed its efforts to pursue salary offset after receiving Petitioner's hearing request. *See* § 20.78(b)(9) (requiring the agency to inform the debtor that “the timely filing of a petition for hearing will stay the commencement of collection proceedings, unless the creditor agency determines that § 20.81(d) applies and further informs the debtor of the basis for its determination”); § 20.81(d) (permitting the agency to effect a salary offset before the hearing's completion “if failure to initiate the offset would substantially prejudice the agency's ability to

Accordingly, any request for § 20.81 review would be premature, and I must grant Respondent's motion to dismiss. Should Respondent decide to pursue salary offset again in the future, Petitioner may then request § 20.81 review.

In her March 31, 2009, filing, much of Petitioner's argument relates to OWCP's waiver determination. Given the current posture of this case, Petitioner would be better served to appeal the waiver determination and present these arguments to the Employees' Compensation Appeals Board. The notice of appeal rights that accompanied OWCP's March 23, 2009, determination letter indicates that Petitioner still has time to file an appeal.

In light of the foregoing, it is hereby **ORDERED** that Respondent's motion is **GRANTED**, and this matter is **DISMISSED**.

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JOHN M. VITTON
Chief Administrative Law Judge

collect the debt"). Respondent also reported that, on March 13, 2009, the Office of the Solicitor of Labor requested that OWCP refund Petitioner \$388.86.