

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0464

In re: WESLEY COLLATZ,
Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Wesley Collatz (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Agricultural Research Service (“Respondent”; “USDA-ARS”); and if established, the ability of Petitioner to pay.

On June 7, 2012, Petitioner timely requested a hearing before the Office of Administrative Law Judges (“OALJ”). A telephone conference was held with Petitioner and Respondent’s representative, Linnette Williams, and a hearing was scheduled to commence on August 30, 2012. The parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture (“Hearing Clerk”). On August 10, 2012, Respondent filed a Narrative, together with supporting documentation. On August 13, 27, and 30, 2012, Petitioner filed documents and argument.

The hearing commenced as scheduled and I admitted the parties’ documents to the record. Petitioner represented himself and testified. Ms. Williams and Lynn Pearson testified on behalf of the USDA-ARS.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

FINDINGS OF FACT

1. Petitioner worked part-time for USDA-ARS when he was a student earning an hourly rate for variable hours.
2. Petitioner recorded his hours of work on a web-based computer time-keeping system that often reflected error codes that Petitioner was instructed to overlook.
3. Towards the end of his tenure, Petitioner requested leave under the Family Medical Leave Act (FMLA).
4. During his tenure with USDA-ARS, Petitioner was provided no training regarding time-keeping and he worked with administrative assistant Lynn Pearson to correct time-keeping entries.
5. Petitioner's leave balances varied due to his varying hours of work, and his status of being on FMLA leave.
6. Petitioner's immediate supervisor was out on leave during much of the period that he worked for USDA-ARS, and he did not know who else to ask for explanations of confusing leave information recorded on his time sheets.
7. Upon the termination of Petitioner's employment with USDA-ARS, the agency discovered that during his employment he had been paid for 38.75 hours of annual leave and 1 hour of sick leave that he had not earned.
8. Petitioner believed that errors in processing timesheets through the on-line system caused him to be mistakenly paid for leave.
9. By letter dated August 16, 2011, Petitioner was presented with a demand for payment of a debt to Respondent in the amount of \$429.94.

10. Petitioner was notified that late fees and penalties would be assessed on any balance delinquent for more than 90 days.
11. On September 14, 2011, Petitioner wrote to USDA's National Finance Center, disputing the debt and asking for a review of the circumstances.
12. Petitioner spoke with a representative of ABCO, who advised that the matter would be investigated by USDA-ARS.
13. Petitioner received an additional demand for payment on March 16, 2012.
14. On March 16, 2012, Petitioner again wrote to ask that collection be suspended pending review of the debt, noting his original letter and his expectation that USDA-ARS was reviewing his claim and request for waiver.
15. The matter was referred to Ms. Linnette Williams on April 17, 2011, and she reviewed all of the information pertinent to the payment of unearned leave.
16. In a letter that she drafted for her supervisor's signature dated May 4, 2012, Ms. Williams concluded that waiver was not appropriate despite administrative errors, because Petitioner should have known that he had been paid for leave that he had not earned.
17. In support of her conclusions, Ms. Williams cited to determinations by the Department of Defense Board of Claims and the Comptroller General, which held that individuals who had been paid unearned amounts of leave were liable to repay the amount regardless of administrative error.
18. Ms. Williams corroborated her findings in her credible testimony.
19. Ms. Pearson credibly testified that the computer-based time and attendance program was error-ridden; that Petitioner had asked for help; and that part-time employees such as Petitioner were not trained in leave processes or in keeping time and attendance.

20. There is no evidence that Petitioner intentionally or negligently entered information that allowed for the erroneous accrual of leave.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Petitioner's request for a hearing was timely filed.
3. Unpaid debts that are delinquent are subject to the assessment of penalties and fines.
4. USDA assessed penalties and fines in the amount of \$46.15 (difference between original demand for payment of \$429.94 on August 16, 2011 and most recent demand for payment of \$476.09 on March 14, 2012).
5. The penalties and fines were improperly assessed on Petitioner's account because he immediately requested a waiver on the debt, which should have suspended collection action.
6. Petitioner's request for review and waiver was not forwarded to USDA-ARS until months later, in mid-April, 2012, through no fault of Petitioner, who diligently pursued resolution of this matter.
7. Once Linnette Williams was assigned the review of Petitioner's account and request for waiver, she acted with all alacrity, reaching a determination by May 4, 2012.
8. Although Ms. Williams' determination is not unreasonable, based as it was upon other rulings involving erroneous accrual of leave, the facts of the instant matter are different from those set forth in the cases she relied upon.
9. In the matter of Board of Claims Case No. WL 5775295, the Board noted that the employee should have realized that he had received an unexplained increase of pay, considering that the employee was aware that he had run out of annual and sick leave. In

contrast, Petitioner's leave balances varied; he did not have a complete understanding of his electronic time sheet which recorded information about earned and projected leave; the timekeeping program was error-prone, and he relied upon Ms. Pearson's help to correct errors; he received no training in keeping leave; and his supervisor was not available to assist him.

10. In the matter of Comptroller General Decision Case No. B-250228, it was determined that an employee had erroneously been credited with an accrual of annual leave greater than the amount to which he was entitled, and therefore, an adjustment to the accrued leave was warranted despite the administrative error that created the problem. In contrast, Petitioner had limited experience working for the government in any capacity and had no training or instruction about the accrual and use of leave; his time and attendance records were fraught with computer errors and he had no training on how to correct errors; his supervisor was absent frequently; and he worked erratic hours, making it difficult for him to determine his accrued leave from the balances noted on his time and attendance records.

11. The preponderance of the evidence establishes that Petitioner acted in good faith in recording his hours of work, and was not at fault or responsible for inaccurate records of time and attendance.

12. It would be unreasonable to conclude that Petitioner should have known that an administrative error existed, where time keeping errors occurred frequently; where his hours of work and pay fluctuated; where his supervisor was not available to assist him; where he had no training or resources other than another employee to help correct errors;

and where he was on Family Medical Leave Act leave for a period of time, which imputes absence from the office and erratic statements concerning leave balances.

13. Waiver is appropriate in these circumstances, as Petitioner reasonably did not know whether he was entitled to leave when it was paid during his tenure with USDA-ARS.

14. Petitioner's debt account should be cancelled.

15. The debt should NOT be collected from Petitioner by income tax offset, administrative wage garnishment, or any other manner.

ORDER

Neither Treasury nor USDA-ARS may collect any amount on Petitioner's account as waiver of this debt is appropriate.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

So ORDERED this 6th day of September, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge