

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [SOA]
) Docket No. **12-0083**
Romina A. Hennig)
)
Petitioner) **Decision and Order**

Appearances:

Romina A. Hennig, D.V.M., the Petitioner, representing herself (appearing pro se); and

Evelyn McGovern, Acting Director, Human Resources Policy, Food Safety and Inspection Service, United States Department of Agriculture, Washington, D.C., for the Respondent (USDA- Food Safety and Inspection Service).

Issue

1. The issue is whether Dr. Hennig shall reimburse USDA- Food Safety and Inspection Service **\$10,305.74**, for the unearned portion of her second year's recruitment incentive pay.

USDA-FSIS seeks repayment, through *salary offset*.

Procedural History

2. The hearing by telephone was held on June 15, 2012. Romina A. Hennig, D.V.M., the Petitioner (Dr. Hennig) participated. The Respondent also participated, represented by Evelyn McGovern and Susan Bowen. The Respondent is the Food Safety and Inspection Service, an agency of the United States Department of Agriculture (USDA). Frequently herein, the Respondent is called "USDA- Food Safety and Inspection Service" or "USDA-FSIS".

Summary of the Facts Presented

3. Dr. Hennig is a veterinarian who works for USDA- Food Safety and Inspection Service.
4. Dr. Hennig's Hearing Request dated September 27, 2011 with attached "Service Agreement for Receipt of Payment for a Recruitment/Relocation Incentive" is admitted into evidence, together with the testimony of Dr. Hennig, and Dr. Hennig's exhibits PX 1 through PX 4, and Dr. Hennig's email dated August 24, 2012.
5. The Salary Offset Hearing Request Transmittal Form dated November 22, 2011 with all attachments ¹ is admitted into evidence, together with the testimony of Evelyn McGovern and Susan Bowen, and USDA- Food Safety and Inspection Service's Exhibits RX-1 through RX-16.
6. As a veterinarian, Dr. Hennig was recruited to work in poultry inspection at Sumter, South Carolina. Dr. Hennig was paid a sign-on bonus ("recruitment incentive"), worth \$14,102.75 per year for up to 4 years. This was her first job with USDA-FSIS; she was hired as a Public Health Veterinarian.
7. The recruitment incentive would be paid for only the time that the recruit continued to work in poultry inspection at Sumter, South Carolina. Dr. Hennig did complete her first year in poultry inspection at Sumter, South Carolina, thereby earning the entire \$14,102.75

¹ The attachments include not only Dr. Hennig's Hearing Request dated September 27, 2011, with attached "Service Agreement for Receipt of Payment for a Recruitment/Relocation Incentive"; but also Notification of Personnel Action showing Effective Date of 12/05/10; Notification of Personnel Action showing Effective Date of 03/13/11; the email from Dr. Hennig dated April 18, 2011 that includes the email from Brian Fleming dated March 30, 2011; the Notice of Intent to Offset Salary; Dr. Hennig's letter to USDA, FSIS, HRD dated June 2, 2011; and Susan L. Bowen's (undated) letter to Dr. Hennig.

for the first year (paid in advance). The \$14,102.75 for the second year was also paid in advance. *See* Notification of Personnel Action showing Effective Date of 12/05/10, with Box 20 showing \$14,102.75. Remarks include: Payment 2 of 4. USDA-FSIS is asking for the unearned portion of that second payment to be repaid.

8. Dr. Hennig's first year working in poultry inspection at Sumter, South Carolina was December 6, 2009 through December 5, 2010. During her second year in the job, Dr. Hennig transferred (within USDA-FSIS, but no longer doing poultry inspection and no longer working at Sumter, South Carolina). USDA-FSIS is not asking for the entire \$14,102.75 for the second year to be repaid, but only a proportional amount.

9. Dr. Hennig's partial second year was December 6, 2010 through March 12, 2011. *See* Notification of Personnel Action showing Effective Date of 03/13/11, for transfer from District #16 - Raleigh, NC, Position Title Supervisory Veterinary Medical Officer (Public Health); to District #15 - Beltsville, MD, Position Title Consumer Safety Officer. Remarks include: Training is a condition of employment for retention in this position. RX-7, p. 1.

10. From December 6, 2010 through March 12, 2011, there were 7 pay periods:

12/05/2010 - 12/18/2010;
12/19/2010 - 01/01/2011;
01/02/2011 - 01/15/2011;
01/16/2011 - 01/29/2011;
01/30/2011 - 02/12/2011;
02/13/2011 - 02/26/2011; and
02/27/2011 - 03/12/2011.

I have reviewed carefully RX 16 and agree with the mathematical calculation and conclude that the unearned portion of Dr. Hennig's second year recruitment incentive is **\$10,305.74**.

Also I have considered carefully Dr. Hennig's email dated August 24, 2012, a copy of

which I am filing with the Hearing Clerk. Dr. Hennig believes her transfer date was June 6, 2011, after the required training. I disagree with Dr. Hennig, based on the Notification of Personnel Action showing Effective Date of 03/13/11. *See* paragraph 9. [There is a Notification of Personnel Action showing Effective Date of 06/05/11 (*see* RX-7, p. 2), which when compared to RX-7 p. 1, shows higher locality pay and a change of duty station from West Columbia Lexington SC to Beltsville Prince Georges MD, but nevertheless I find that the new job began on March 13, 2011, even though the job began with training.]

11. The recruitment incentive (“bonus”) that was part of Dr. Hennig’s pay package when she worked in poultry inspection at Sumter, South Carolina (RX- 4) would not carry over to her new job that began March 13, 2011. RX 7, p. 1. If the facts discussed thus far were all that needed to be considered, I would conclude that Dr. Hennig owes USDA-FSIS **\$10,305.74**, and the next step would be to consider whether she can withstand *salary offset* in the amount of 15% of her disposable pay without that causing her financial hardship. Before going to that step, however, there are 2 other considerations.

12. Dr. Hennig testified credibly that she was told by someone at USDA-FSIS Human Resources that so long as she stayed within the Agency (USDA-FSIS), she would not have to repay any portion of the second year recruitment incentive. Dr. Hennig’s letter to USDA, FSIS, HRD dated June 2, 2011, includes:

The disagreement over indebtedness arose because of the information I was given by FSIS Human Resources before I accepted the new position. I was offered the EIAO position on February 23 and was given 24 hours to decide if I wanted to accept it. During that time, I gathered as much information as I could to made an educated decision. The language in the paperwork I was given regarding the PHV incentives when I initially joined the agency is not clear as to what will have to be repaid and under what circumstances

repayment will be required. I did my due diligence and inquired at the FSIS Human Resources office by phone about whether I would lose the incentives given as a PHV if I took the EIAO position. I was informed that in such a case, I would *not* get the remaining installments of my bonus, but that I also would *not* have to pay back any of the bonus already paid to me because my new position would still be within FSIS. The same statement was made regarding the loan repayment incentive. Either this information was incorrect or I was erroneously billed.

I made the decision to accept the position as an EIAO on February 24 based on this information provided by HR. If I had known that I would go into such serious debt by taking the EIAO position, I would not have accepted it. By the time I was informed that I would have to repay the bonus, I had already attended four weeks of EIAO training and my PHV position had been offered to someone else. I had also already made the commitment to the Beltsville District Office to take the position as an EIAO, so I could not go back to my former position as a PHV. I truly believe that my knowledge as a veterinarian and my scientific skills would be an asset and not a detriment to the Agency as I perform the duties of an EIAO. I am committed to the Agency's mission and my decision to accept the EIAO position was made in good faith. I made every effort possible to determine if my transfer would lead to indebtedness and I was ultimately either given the wrong information by FSIS Human Resources or I was erroneously billed. Therefore, I must request a hearing to have the question of indebtedness reviewed further.

13. Dr. Hennig wanted EIAO training, which would probably enhance her promotion potential. EIAO stands for Enforcement Investigations and Analysis Officer.²

14. Dr. Hennig inquired about getting the EIAO training while working at her Sumter, South Carolina duty station. Dr. Hennig's email dated June 17, 2010 inquired; the response the same day showed no current opportunity for her where she was, but encouraged her "to take the opportunity to speak with EIAOs about their job to determine if you might be interested in applying for an EIAO position. Good luck in your career!" PX 1.

² See http://www.fsis.usda.gov/FSIS_Employees/EIAO_Training_Modules/index.asp

15. Dr. Hennig knew that obtaining the EIAO training would be valuable; nevertheless I accept her statement as true, that if she had known that she would go into such serious debt by taking the EIAO position, she would not have accepted the reassignment. When Dr. Hennig was told that she would not have to repay any portion of the bonus she had already been paid because she was staying within FSIS, that was wrong. Having been given the wrong information and having relied on it, Dr. Hennig is nevertheless not entitled to debt forgiveness. The wrong information Dr. Hennig was given does not negate the obligation USDA-FSIS has to recover the unearned portion of Dr. Hennig's second year recruitment incentive of **\$10,305.74**. Dr. Hennig was misled, but that does not justify forgiving the repayment due.

16. Now, to the last consideration. When Dr. Hennig reported to her new job within USDA-FSIS, Dr. Hennig was leaving a job in pay band 4 (AP-4) [comparable to GS 12/13], Supervisory Veterinary Medical Officer; she was taking a reassignment to a job also in pay band 4 (AP-4), Consumer Safety Officer. Her pay band did not change, and the new job had no "built-in" "career ladder" to a promotion with higher pay. Consequently, USDA-FSIS Human Resources determined that Dr. Hennig's new job was without higher promotion potential. See Brian Fleming's email dated March 30, 2011, which states in part: "The EIAO position does not have a recruitment incentive like the PHV position. Your movement to the EIAO also is considered a reassignment to a position without higher promotion potential. For these reasons you will be billed, on a pro rated basis (approximately eight and a half months), for the recruitment incentive that you received this past December only." RX-8.

17. Dr. Hennig stayed within USDA-FSIS when she took the reassignment, and she does not have to repay the recruitment incentive on a pro rata basis, **IF** she was “promoted or **reassigned to a position with greater promotion potential in FSIS.**” USDA-FSIS Directive 4300.8 regarding Recruitment, Relocation, and Retention Incentives (*see* RX-15, p. 12).

18. Dr. Hennig has persuaded me that she does have greater promotion potential in FSIS in her new job, even though the new job has no “built-in” “career ladder” to a promotion with higher pay. This was no easy thing to prove. First, Dr. Hennig proved that she tried to get EIAO training while working at her Sumter, South Carolina duty station and could not. *See* paragraph 14. *See* PX 1. Next, Dr. Hennig proved that she could get EIAO training if she accepted the reassignment; in fact, the EIAO training was a condition of employment for retention. Dr. Hennig then proved that “out of seven (7) Front Line Supervisors in the Beltsville District, six (6) have completed EIAO training.” PX 2. [Dr. Hennig testified that the other one (the 7th of 7), had more than 20 years’ experience in food safety and inspection service.] Dr. Hennig proved next that, “There are approximately 140 FLS at FSIS. Of these, approximately 111 FLS have completed EIAO training.” PX 3. That, Dr. Hennig pointed out, is 79.3%.

19. Dr. Hennig showed the importance of the EIAO course, including its importance to becoming a Front Line Supervisor. A Front Line Supervisor is in pay band 5, comparable to GS-14. Dr. Hennig had reason to expect that the EIAO course would be available to her. *See*, for example, FSIS Directive 4300.10 regarding Ensuring that Inspection Program Personnel Have Proper Training to Cover Work Assignments, PX 4, p. 14.

20. Dr. Hennig accepted reassignment within USDA-FSIS to a job that would include EIAO training, which for that reason **was a position with greater promotion potential in FSIS**, because promotion to Front Line Supervisor would be more likely if she had EIAO training.

Findings, Analysis and Conclusions

21. The Secretary of Agriculture has jurisdiction over the parties, Dr. Hennig and USDA- FSIS, and over the subject matter, which is *salary offset*.

22. Dr. Hennig’s evidence persuades me that, by being reassigned to a job within USDA-FSIS that would include EIAO training, which she had tried to get but couldn’t while working in poultry inspection at Sumter, South Carolina, Dr. Hennig was “**reassigned to a position with greater promotion potential in FSIS**” and that consequently she does not have to repay the recruitment incentive on a pro rata basis.

23. Dr. Hennig does **not** have to repay the unearned portion of her second year recruitment incentive of **\$10,305.74**.

Order

24. USDA-FSIS shall record that Dr. Hennig took a **reassignment to a position with greater promotion potential in FSIS**, and that consequently she does **not** have to repay the recruitment incentive on a pro rata basis. [Dr. Hennig is more likely to advance because she has the EIAO training.]

25. USDA-FSIS shall not offset Dr. Hennig’s pay or other **Federal monies** payable to the order of Dr. Hennig to recover the **\$10,305.74** or any portion of it.

26. Dr. Hennig owes no repayment to USDA-FSIS as a result of her reassignment on March 13, 2011.

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

Done at Washington, D.C.
this 4th day of October 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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