

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Suzanne W. Asplen,)	Date: September 23, 2008
)	
Petitioner,)	
)	
- v. -)	Docket No. C-08-572
)	Decision No. CR1845
United States Department of Health and)	
Human Services.)	

DECISION

Petitioner, Suzanne W. Asplen, an employee of the United States Department of Health and Human Services (DHHS), seeks review of her employer’s determination that she was overpaid for the pay periods ending June 9, 2007 through April 12, 2008. After considering the entire record, I find that Petitioner was overpaid \$2,316.40 and that DHHS is entitled to recover these funds.

Background

Petitioner’s payroll office advised her in a letter dated May 10, 2008, that she had been overpaid \$2,316.40 because “of a Personnel change(s).” On June 9, Petitioner requested a hearing to challenge the amount of the debt. The hearing request was forwarded to this office, and received on June 23, 2008.

Petitioner’s request was neither timely nor sufficient to satisfy statutory and regulatory requirements. *See* 5 U.S.C. § 5514(a)(2); 45 C.F.R. § 33.6. In an order dated July 17, 2008, I found good cause to accept her request as timely, and granted her ten days in which to submit an amended hearing request satisfying the requirements of the regulation. Pursuant to this order and subsequent extensions of time, Petitioner submitted an amended request, asking for a paper hearing concerning the amount of the overpayment “because I have been unable to replicate the amount of the debt using all materials and

resources available to me.” She also complained about a possible tax loss for calendar year 2007.

DHHS responded in an August 14, 2008 submission which explained the method by which deductions were calculated.

Petitioner indicated that she was not satisfied by her employer’s response and requested additional time to prepare a response, which I granted. She submitted her reply on September 2, 2008.

Findings and Conclusions

I do not find that Petitioner’s hearing request was baseless nor that it resulted from an intent to delay creditor agency collection activity. *See* 45 C.F.R. § 33.6(d)(2)(ii).

The parties agree that Petitioner was overpaid when she was given a within-grade increase to which she was not entitled. In her amended hearing request, Petitioner does not challenge the gross amount of the overpayment. She complains that she is unable to “verify that the net amount that was deducted from my pay for the overpayment is correct.” Amended Petition at 1 (August 1, 2008). She also complains that she *might* have incurred an additional loss because the overpayment *might* have affected the amount of an Economic Stimulus Payment from the Internal Revenue Service (IRS), and she feared that she would not receive an amended W-2 form which would enable her to file an amended return. *Id.*

DHHS has submitted a detailed analysis explaining the deductions taken from Petitioner’s gross income, and explaining the “slight difference” between its calculations and Petitioner’s. Petitioner did not include one pay period, and did not account for the split pay in the pay period ending June 9, 2007. During that pay period, she received pay for 40 hours at a GS 14/5 pay level and 40 hours at a GS 13/8 pay level. Agency Submission at 2-3 (August 14, 2008).

With respect to her concerns about the tax consequences of the overpayment, DHHS explains that, pursuant to IRS regulations, her overpayment is considered income for the year received so she will not receive an amended W-2 form; however, she will receive a certificate for the total debt paid for the current year, which can be filed with her current taxes. Of course, I have no authority to second-guess the IRS rules in this regard.

I also find it questionable whether I have the authority to micro-review the specific deductions taken. Assuming I have such authority, the burden is on Petitioner here to show that the debt is invalid or that the amount is incorrect. Petitioner has done neither.

