Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

| In the Case of: |) | |
|---------------------------------|---|---------------------|
| |) | |
| Steve R. Jean, |) | Date: April 7, 2009 |
| |) | |
| Petitioner, |) | |
| |) | |
| - V |) | Docket No. C-09-306 |
| |) | Decision No. CR1939 |
| Social Security Administration. |) | |
| |) | |

DECISION

Petitioner, Steve R. Jean, an employee of the Social Security Administration (SSA), seeks review of his employer's determination that, because of a salary overpayment, he owes SSA \$5,034.48. I dismiss as untimely his hearing request.

Federal regulations give government employees the right to a hearing to challenge the existence or amount of debt purportedly owed to the United States. 45 C.F.R. § 33.6. But a petition for hearing must be sent within 15 days of the employee's receipt of the notice letter. 45 C.F.R. § 33.6(a). If filed after the 15-day period, the petition will be dismissed unless the employee establishes that the delay was the result of circumstances beyond his control or that he did not receive actual notice of the filing deadline. 45 C.F.R. § 33.6(b).

In an order dated March 18, 2009, I advised the parties that, based on the documents submitted, I was not able to determine whether the requirements of section 33.6 were met, and directed the parties to submit additional documentation, including copies of the notice letter and certificate of Petitioner's receipt of that letter. In accordance with my order, SSA has submitted a short response, with four exhibits attached (SSA Exs. 1-4). Petitioner submitted a letter with unmarked attachments.

SSA has established the following:

The Department of Interior performs payroll services for SSA. SSA Ex. 1. In a notice letter dated January 13, 2009, Payroll Supervisor Gloria Roberts advised Petitioner Jean

that he had received pay higher than it should have been. SSA Ex. 2, at 1-2. An attachment to the letter set forth, by pay period, the overpayment amounts, which totaled \$5,034.48. SSA Ex. 2, at 11. Another attachment set forth Petitioner's appeal rights, and advised him that his hearing request "must be postmarked no later than 15 days from the date of this letter." SSA Ex. 2, at 9. Ms. Roberts sent the notice by certified mail, and SSA has produced a return receipt showing January 20 as the date of receipt. SSA Ex. 3. SSA has produced a copy of the Petitioner's hearing request showing that it was sent by facsimile on February 10, 2009. SSA Ex. 4.

Petitioner submits no evidence to contradict any of these dates. He says simply that he completed and filed his request within 15 days, and in accordance with the notice.

The uncontroverted evidence establishes that Petitioner received the notice on January 20, 2009. The notice advised him of his appeal rights, including the 15-day deadline for requesting a hearing. To be timely, his request should have been filed no later than February 4, 2009. He plainly missed that deadline. Not only has SSA produced evidence that he transmitted the request on February 10, but Petitioner attached to that request a grievance dated February 6, two days after the filing deadline had passed.

Petitioner has not claimed, nor provided any evidence to show, that the delay was caused by circumstances beyond his control. Nor does he deny receiving notice of the filing deadline.

Because Petitioner failed to request a hearing timely, and that failure has not been excused, he waives his right to hearing, and is liable to have his disposable pay offset in accordance with the offset schedule established by his employer. 45 C.F.R. § 33.6(b)(2)(i).

/s/
Carolyn Cozad Hughes
Administrative Law Judge