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JUDICIAL OFFICER

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In the Matter of the Debt Collection Act Petition

_____)
SHARON M HELMAN,)
Petitioner,)
)
v.)
)
U.S. DEPARTMENT OF VETERANS)
AFFAIRS,)
Respondent.)
_____)

February 25, 2015

P.S. Docket No. VA 14-397

ORDER

Petitioner, Sharon Helman, requests that I order Respondent, the Department of Veterans Affairs (VA), to return salary offsets it has taken to satisfy the alleged debt underlying this Petition pending a final decision on the merits. The VA opposes the motion. For the reasons set out below, I grant Petitioner's motion and order the VA to return the money it has offset from Ms. Helman's salary until I issue a final decision addressing the ultimate issue of liability for the alleged debt. A hearing to address that issue is scheduled for April 29, 2015.

On June 14, 2014, the Defense Finance and Accounting Service (DFAS), acting as the VA's payroll agent, notified Ms. Helman of the VA's intent to collect a debt of \$9,080.60 based on a salary overpayment. After making adjustments for "overpayment deductions on earning," the VA sought to collect a net debt of \$5,624.80. (Exh. A).

The DFAS letter advised Ms. Helman of her statutory rights to request documents relating to the alleged debt and to ask for a hearing. According to the DFAS letter, if Ms. Helman requested documents, she would then have 45 days from her receipt of the documents to request a hearing. Finally, the DFAS letter notified Ms. Helman that, as required by the Debt Collection Act, collection of the debt would be suspended until a hearing official issued a decision. (Exh. A).

On June 25, 2014, Ms. Helman stated her intention to request a hearing and asked the VA to produce records related to the alleged debt (Exh. B). Most (if not all) of the requested documents should have been in the VA's possession. Without explanation, however, the VA directed Ms. Helman to contact DFAS for the relevant documents (Exh. C).

On August 7, 2014, Ms. Helman sent a follow-up letter to the VA stating her (apparently mistaken) belief that her original document request had been forwarded to the VA Central Office. She then reiterated her request for documents. Finally, she notified the VA that as of August 1, 2014, DFAS had begun to offset her salary to satisfy the alleged debt. (Exh. D). The salary offsets continued from August 2014 through the pay period ending on November 29, 2014. In total, the VA offset \$5,624.80 to satisfy the entire balance of the disputed debt. (Attachments to Petitioner's Motion dated February 13, 2015).

On August 28, 2014, the VA provided Ms. Helman with some of the documents she requested (Exh. E). Later, on September 17, 2014, the VA's Office of General Counsel notified Ms. Helman that the General Counsel's Office did not have any

responsive documents related to her document request (which the letter mistakenly referred to as a Freedom of Information Act request) (Exh. F).

On September 30, 2014, Ms. Helman wrote to the VA's Acting General Counsel to complain about the salary offsets DFAS was taking to satisfy the debt. She asked the Acting General Counsel to direct DFAS to stop the offsets. (Exh. K).

On October 14, 2014, Ms. Helman filed a timely written request for a hearing. She again asked the VA to direct DFAS to stop the ongoing salary offsets.

The Debt Collection Act provides that the VA must provide its employees with notice and an opportunity for a hearing before initiating collection action. 5 U.S.C. § 5514(a)(2). In accordance with this statutory directive, the VA's implementing regulations provide that:


If the employee filed a request for a hearing as provided by § 1.984 before the expiration of the period provided for in that section, deductions will not begin until after the hearing official or administrative judge has provided the employee with a hearing, and has rendered a final written decision.

38 C.F.R. 1.991.

In response to Ms. Helman's motion, the VA first argues that 5 U.S.C. § 5514(a)(1) authorized its salary offsets. While the VA is correct that 5 U.S.C. § 5514(a)(1) allows an agency to use salary offsets to collect a debt, this argument ignores 5 U.S.C. § 5514(a)(2), which specifically provides that the agency must suspend collection actions to allow for notice and a hearing.

The VA also argues that it was allowed to take a salary offset from Ms. Helman's final paycheck (for the pay period ending November 29, 2014) under the authority of 40 C.F.R. 13.30(d)(2). That regulation, however, governs actions by the Environmental Protection Agency and is inapplicable to this Petition. See 40 C.F.R. 13.1.

Accordingly, I find that the salary offsets were premature and that the VA violated the provisions of both 5 U.S.C. § 5514(a)(2) and 38 C.F.R. 1.991. By March 10, 2015, the VA must return \$5,624.80 to Ms. Helman.¹ By the same date, the VA must also provide my office with written notification that it has returned the offsets. The VA is reminded that it may not take any further collection action until I issue a final written decision.



Alan R. Caramella
Administrative Judge

¹ Although Ms. Helman has asked that the VA return \$9,080.60, the remaining difference of \$3,455.80 represents deductions for taxes and benefits that the VA took on Ms. Helman's behalf. Thus, she is not entitled to the return of those deductions.