

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

APHIS Docket No. 07-0016

In re: STEVEN A. KAUSE

Petitioner

DECISION AND ORDER

This is a salary offset case and is before the Administrative Law Judge upon the Petitioner's request for a hearing in accordance with 7 C.F.R. § 3.56 *et seq.*¹ A telephonic hearing was conducted on December 1, 2006. The Petitioner, Steven A. Kause, who was not represented by counsel participated *pro se* and the Respondent was represented by Kitty Asper, Human Resources Specialist-Compensation, USDA/APHIS Marketing and Regulatory Programs, Human Resources Operations, Minneapolis, Minnesota.

As the Petitioner was uncertain whether he had received the supporting documentation concerning the existence of the debt which was generated by the erroneous cancellation of his Federal Employees Health Benefit ("FEHB") deduction for Pay Period 5 of 2006, by Order dated December 1, 2006, I directed that documentation be resent to him and he was given an additional 14 days in which to submit any additional material he wished the Administrative Law Judge to consider. The Petitioner

¹ The December 1, 2006 Order incorrectly referred to 7 U.S.C. § 1951.101, *et seq.* as the authority for the referral. Those provisions apply only to offsets by the Farm Services Agency (FSA), Rural Housing Service (RHS) and Rural Business-Cooperative Service (RBS).

failed to submit any additional matter and the matter is ripe for disposition without further hearing.

The Petitioner was advised that the scope of the proceedings would be limited to determining: (1) whether he, as an employee, owed a debt to the Department; (2) whether the debt would be eligible to be the subject of an offset; (3) the amount of the debt, if any, and; (4) if appropriate, the percentage of disposable pay to be deducted in satisfaction of the debt. Allegations and matters concerning the identification of individuals responsible for the error generating the debt and discipline of any employee are beyond the statutory scope of the hearing and will not be considered.

Subsequent to the Petitioner's request for hearing, but before the telephonic hearing on December 1, 2006, the Petitioner ceased to be employed by the United States Department of Agriculture, with a separation date of June 11, 2006. The full amount of the indebtedness in question, plus accrued interest, in the amount of \$117.20 was deducted from the Petitioner's severance pay during pay period 13 of 2006, the official pay date for which was July 20, 2006.

As the Petitioner is no longer an employee of the United States Department of Agriculture, determination of whether his pay is eligible for offset and the percentage of his disposable pay which might be deducted in satisfaction of the debt has been essentially mooted by his separation; however, it still remains possible to resolve the other questions raised in the petition for hearing, including whether the Petitioner owed a debt to the Department and the amount of the debt if any.

As previously noted the indebtedness was generated by the erroneous cancellation of the Petitioner's FEHB coverage for Pay Period 5 of 2006, an error corrected the

following pay period. Report of Investigation (ROI), Enclosures 4 and 5. The amount of the debt was originally \$116.76, the FEHB premium cost for one pay period. *Id.*, Enclosures 6 and 7. Interest in the amount of \$0.44 accrued before the debt was collected and was added to the deduction that was made from the Petitioner's severance pay. Memorandum dated January 11, 2007, SUBJECT: *In re Steven A. Kause*- APHIS Docket No. 07-0016.

While the overpayment which created the debt was the result of an administrative error, the record establishes that the employee was provided records which, if reviewed, would have indicated the overpayment. In such circumstances, the Comptroller general has ruled that if the employee fails to review such documents, he is not without fault and requests for waiver of the indebtedness must be denied. *In the Matter of Sheldon H. Avenius, Jr.*, B-226465, 1988 WL 227286 (Comp Gen.). Such records were available to the Petitioner. ROI, Enclosure 9.

Accordingly, based upon the evidence before me, consisting of the exhibits contained in the record and the Petitioner's statements during the hearing, the following Findings of Fact, Conclusions of Law and Order will be issued.

FINDINGS OF FACT

1. The Petitioner, Steven A. Kause, was overpaid the amount of \$116.76 as a result of administrative error canceling his FEHB coverage for Pay Period 5 of 2006 incident to the making of a correction to his appointment status. No premium was collected for Pay Period 5; however, the error was detected the following pay period and a bill in the amount of \$116.76 was created.

2. Although the Petitioner was an employee of the United States Department of Agriculture when the debt was created, his employee status terminated on June 11, 2006. As the Petitioner is no longer an employee, the use of offset is moot.

3. The amount of the debt that was created by the overpayment was \$116.76, together with accrued interest, which was owed at the time of the Petitioner's request for hearing. As the amount of \$117.20 was collected from the Petitioner's severance pay, the original amount of the debt and accrued interest has since been paid and is no longer owed to the Department.

CONCLUSIONS OF LAW

1. The Petitioner is no longer an employee against whom offset is available.
2. The debt, having been collected from the Petitioner's severance pay, has been satisfied in full.

ORDER

The Petitioner no longer being an employee of the Department and the debt owed to the Department having been satisfied in full, the Petition is **DISMISSED**.

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

Done at Washington, D.C.
January 12, 2007

PETER M. DAVENPORT
Administrative Law Judge

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