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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

Ashley N. Johnson (**SOA Docket No. 17-0260**),

Petitioner.

Decision and Order on the Written Record

Appearances:

Joey D. Gonzalez, Esq., Florida, for Ashley N. Johnson, the Petitioner; and

Hillary E. Clark, Esq., Agency Representative, Beltsville MD, for the Respondent, the USDA- Agricultural Research Service.

This Decision and Order is based on the written record. The evidence is sufficient for me to decide the ***salary offset*** issue.

Findings & Conclusions

1. The Secretary of Agriculture has jurisdiction over the parties, Ashley N. Johnson and the USDA- Agricultural Research Service; and over the subject matter, which is ***salary offset***.

2. Petitioner Ashley N. Johnson works for the USDA- Agricultural Research Service at a location in Miami, Florida, and she was promoted to GS 09 Step 4 with an effective date of 02/05/17 and an approval date of 02/05/17.

3. Petitioner Ashley N. Johnson's promotion effective date was changed from 12/04/2016 to 02/05/17 at the request of a person who worked for USDA- Agricultural Research Service. The 12/04/2016 was cancelled.

4. One explanation in the written record for the 2-month difference in Petitioner Ashley N. Johnson's promotion effective date is that 12/04/2016 was in the middle of a pay period.

Promotion actions are typically effective at the beginning of a pay period.

5. Either Pay Period 24 or Pay Period 25 could have been used to solve the middle-of-a-pay-period problem. Pay Period 24 began on November 27, 2016; Pay Period 25 began on December 11, 2016. A routine correction that might have been predictable would have been to change the promotion effective date to 12/11/16.

6. There are other explanations in the written record for the 2-month difference in Petitioner Ashley N. Johnson's promotion effective date. I do not need to choose any particular explanation for the change from 12/04/2016 to 02/05/17 to decide this case.

7. My involvement is limited, in this ***salary offset*** case. USDA- Agricultural Research Service seeks repayment, through ***salary offset***. *See* 7 C.F.R. §§ 3.70 - 3.87 regarding Federal Salary Offset. The issue before me is whether Petitioner Ashley N. Johnson shall reimburse USDA- Agricultural Research Service **$ 87.74**.

8. USDA- Agricultural Research Service explains the issue: "The subject of this Petition, **$87.84**, is the amount Petitioner was overpaid for the promotion during the period before it was cancelled and the effective date changed to 2/5/2017. Since the promotion was not effective until 2/5/2017, it is undisputed that Petitioner received an overpayment."

9. Petitioner Ashley N. Johnson MAY have been overpaid **$87.84**, but I cannot reproduce the calculation. The written record contains no calculation. I do not know what days and what dollar amounts per day were involved.. I do not know why the SF-50 that shows Ashley N. Johnson's promotion effective date as 12/04/16 bears an approval date of 02/23/17.

10. USDA- Agricultural Research Service shall NOT be repaid the **$87.84**, because the amount is *de minimis* (trifling, insignificant); the written record persuades me that Petitioner Ashley N. Johnson is not at fault and had no reason to realize that she was not entitled to the **$87.84**; the debt should be cancelled and forgiven; and Ashley N. Johnson shall not be required to repay the **$87.84**.

11. USDA- Agricultural Research Service shall NOT ***offset*** Ashley N. Johnson's pay or other Federal monies payable to the order of Ashley N. Johnson to recover the **$87.84** or any portion of it. If **$87.84** or any portion of it was taken from Ashley N. Johnson by ***salary offset*** or other means for 12/04/2016 to 02/05/17, the amount shall be returned to Ashley N. Johnson.

12. For the foregoing reasons, the following Order is issued.

Order

13. Petitioner Ashley N. Johnson has prevailed. USDA- Agricultural Research Service shall NOT ***offset*** Ashley N. Johnson's pay or other Federal monies payable to the order of Ashley N. Johnson to recover the **$87.84** or any portion of it. ***See*** paragraphs 10 and 11.

Copies of this "Decision and Order on the Written Record " shall be sent by the Hearing Clerk to each of the parties.

Done at Washington, D.C.
this 7th day of May 2018

Jill S. Clifton
Administrative Law Judge

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