

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
In the matter of Marcia Moriarty,)	Date: May 8, 2008
)	
Petitioner,)	
)	
- v. -)	Docket No. C-08-80
)	Decision No. CR1787
Social Security Administration.)	

DECISION

Marcia Moriarty, Petitioner, filed a request for a hearing to contest the validity of a \$231.20 salary overpayment debt the Social Security Administration (SSA or the Agency) determined she owed. After considering the entire record, I find that Petitioner received \$231.20 in overpayment from SSA and that the Agency is entitled to recover these funds.

I. Background

This case was received by the Civil Remedies Division on November 5, 2007, and assigned to me for hearing pursuant to 5 U.S.C. § 5514(a)(2)(D), as implemented by 45 C.F.R. § 30.15. I held a prehearing conference by telephone with Petitioner and counsel for SSA on January 23, 2008. Inasmuch as Petitioner appeared *pro se*, I advised her of the right to be represented by counsel, and she indicated that she understood this right but elected to represent herself. After discussing the issues involved in this case with the parties, it became obvious that no material facts were in dispute, and that an in-person hearing would be unnecessary. Therefore, I established disclosure and briefing deadlines as outlined in my Order dated January 28, 2008.

Pursuant to my Order, SSA filed a brief on February 15, 2008 (SSA Br.), and Petitioner submitted a brief in response on March 7, 2008 (P. Br.). On March 25, 2008, SSA filed a reply brief. The Agency proffered five exhibits. These have been admitted into evidence without objection as SSA Exhibits 1-5 (SSA Exs. 1-5). Petitioner offered nine exhibits

numbered from 7-15. I have admitted them into the record without objection as Petitioner Exhibits 7-15 (P. Exs. 7-15).

Based on the applicable law and regulations and the arguments and documentary evidence submitted by the parties, I find that Petitioner has been overpaid and recovery by SSA is appropriate.

II. Findings and Conclusions of law

Petitioner is a former SSA employee who applied for disability retirement benefits in March 2005. Prior to being awarded disability retirement benefits, Petitioner had exhausted all of her annual and sick leave balances. As a result, Petitioner applied for the Agency's Voluntary Leave Transfer Program (VLTP).¹ Her request was approved on June 7, 2005. P. Br. at 1; P. Ex. 8. As part of the VLTP, Petitioner received a donation of eight hours paid leave which was applied to her time and attendance record for the pay period ending June 10, 2005.² Based on the donated leave, Petitioner received a salary payment in the sum of \$231.20. P Ex. 13.

In August 2005, when the SSA Human Resources (HR) office learned that Petitioner's application for disability retirement benefits had been approved, they reviewed her time and attendance records to ascertain the last time she was paid. It was determined that she received pay for one day (eight hours pursuant to the VLTP) credited on June 3, 2005. Prior to that day of pay, Petitioner had last been paid on April 13, 2005. SSA Ex. 4; P. Ex. 15.³ Had Petitioner not received pay for June 3, 2005, she would then be entitled to be paid disability retirement benefits retroactive to April 14, 2005, instead of June 4, 2005. The net disability retirement annuity was estimated to be \$2,412 per month. Inasmuch as Petitioner would benefit greatly from an amendment changing the eight hours of leave share used on June 3, 2005, to leave without pay (LWOP), the HR office contacted her to discuss that option. After the option of amending the time and attendance record was

¹ The VLTP (also referred to herein as leave share) is governed by 5 C.F.R. § 630.901.

² The eight hours of donated leave were credited to June 3, 2005, on Petitioner's leave and earnings statement. SSA Br. at 2.

³ I note that SSA Ex. 2, at 3 has a handwritten notation indicating that the last day of pay was "4/14/2005." I am aware of this discrepancy, but for purposes of this decision, it is not necessary to resolve the inconsistency.

explained to Petitioner, as well as the fact that such amendment would result in an overpayment, she agreed to the change.⁴ SSA Ex. 4; P. Br. at 2.

The issue before me is whether there is a valid debt that SSA may collect from Petitioner. There is no question that as a result of the previously discussed trade-off, Petitioner reaped a handsome benefit. She does not question that she agreed to the amendment to her time and attendance record, but contends that she never agreed to be responsible for any resulting overpayment. P. Br. at 2. Additionally, Petitioner alleges that she was not advised of any potential disadvantages that could arise if she received any type of pay from SSA while her disability retirement claim was pending. P. Br. at 3.

Petitioner's contention that she is not indebted to SSA because she never agreed to be responsible for any resulting overpayment is without merit. That argument is inconsistent with her admission that she agreed to the amendment of her time and attendance for June 3, 2005, from eight hours of leave share to LWOP. Once she agreed to have those eight hours converted to leave without pay, she was on notice that she was not entitled to pay for June 3, 2005. Inasmuch as renouncing the \$231.20 pay for that day was a condition precedent to receiving disability retirement benefits retroactively to April 14, 2005, Petitioner could not have understood that she could be entitled to the overpaid amount as well as the retroactive disability retirement benefits. It was one or the other. And the record is unequivocal that she chose the more beneficial one. It is disingenuous of her to presume ignorance of the consequences of opting for more than \$3,000 in retroactive retirement benefits in exchange for one day of pay amounting to only \$231.20.

Petitioner's other argument that she was not advised of any potential disadvantages that could arise if she received any type of pay from SSA while her disability retirement claim was pending is also misplaced. For SSA to carry such a burden is unjustified. Moreover, the Agency could not be required to anticipate whether disability retirement benefits would be approved by the Office of Personnel Management (OPM).⁵ Once SSA learned of OPM's approval, it contacted Petitioner through the HR office and informed her of the

⁴ Basically, Petitioner agreed to give up entitlement of the \$231.20 for one day of pay, in exchange for approximately one and one-half months of retirement benefits at the rate of \$2,412 a month.

⁵ SSA is correct in stating that because the Agency had no way of knowing whether Petitioner would be approved for disability annuity, it was not inappropriate to offer her participation in VLTP when her sick and annual leave was exhausted, instead of advanced leave; and that had she been granted advance leave, an identical issue would have occurred with respect to the creation of an overpayment.

disadvantage of not amending her time and attendance record. Not to do so would have resulted in a loss of more than \$3,000 in retroactive disability retirement benefits.

In view of the foregoing, I find that Petitioner is indebted to SSA in the sum of \$231.20. The burden is on Petitioner here to show that the debt is invalid or that the amount is incorrect. Petitioner has done neither.

III. Conclusion

Based on my review of the entire record in this case, I find that Petitioner received a salary overpayment in the amount of \$231.20. This is the final administrative determination of SSA in this case.

/s/

José A. Anglada
Administrative Law Judge