



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

Docket No. 06-15-OP

MARVIN,

Overpayment Proceeding

Respondent.

DECISION

This matter comes before me following an adverse decision denying Mr. Ellis a waiver of a purported overpayment of \$10,489.77. According to the bill of collection, the amount of the overpayment reflects the dollar equivalent for 80 hours of negative annual leave and 196 hours of negative sick leave that existed at the time of the retirement of Mr. Ellis on November 3, 2005.¹ In this action, Mr. Ellis argues that his bankruptcy discharged 300 hours of existing negative leave and that once the Department's records are corrected to reflect this fact, it is evident that no debt exists. I agree with Mr. Ellis.

During 2003 and thereafter, Mr. Ellis had a medical situation that necessitated significant leave. In this regard, he used existing sick and annual leave and requested and was given negative sick and annual leave that he used. Mr. Ellis also had financial problems and, as a result, filed a petition for bankruptcy on February 7, 2005. In that petition, Mr. Ellis listed as an unsecured debt, a debt owing to the Department in the amount of \$10,437.15. This figure reflected 300 hours of negative annual and sick leave that existed at that time. The Department, as a creditor, was served with notice and did not appear. Subsequently, the petition was granted on January 17, 1996. As a result, Mr. Ellis's debt to the Department was legally discharged. Though discharged, the Department failed to adjust its time and attendance records to reflect this fact.

Mr. Ellis continued to work for the Department and retired on November 3, 2005. At that time, the time and attendance records indicated 270 hours of negative leave consisting of 80 hours of annual leave attributable to 2005 and 196 hours of sick leave of which 40 hours were attributable to 2005, 132 hours to 2004, and 24 hours to 2003. As a result, a bill of collection

¹ Negative leave is more commonly referred to as advance leave.

was issued on May 19, 2006, to collect \$10,489.77, the dollar amount attributable to this negative leave.

There is no dispute that Mr. Ellis had a debt owing to the Department based upon 300 hours of negative sick and annual leave that existed at the time the bankruptcy petition was filed. It is also indisputable that the effect of the bankruptcy was to discharge this unsecured debt. Though discharged, the Department failed to appropriately adjust its time and attendance records. Consequently, when Mr. Ellis retired, his time and attendance records were incorrect. While the records indicated 270 hours of negative leave, the correct figure was a positive 30 hours. Hence, Mr. Ellis had accumulated leave of approximately 30 hours at his retirement. Therefore, it is determined that Mr. Ellis did not owe the Department a debt of \$10,489.77 at the time of his retirement.²

Allan C. Lewis
Chief Administrative Law Judge

Dated: January 22, 2007

² In addition to this claim, Mr. Ellis indicates the Department seized from him \$802 in wage and/or civil service retirement contributions under the Federal Debt Recovery Act in April 2006. I have no jurisdiction over this matter and, therefore, can take no action.