

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

FSA Docket No. 05-0002

In re:

RICHARD L. BLACKWOOD

Petitioner

DECISION

This matter is before the Administrative Law Judge upon the Petition of Richard L. Blackwood who seeks review of a proposed offset of his federal salary. A telephonic hearing was held on September 15, 2005. The Petitioner, Richard L. Blackwood, who is not represented by counsel, participated *pro se*. Farm Services Agency, (hereafter "FSA") the Department of Agriculture agency that initiated the offset was represented by Kimble J. Hayes, Farm Loan Chief, Farm Services Agency, United States Department of Agriculture, Morgantown, West Virginia. Following the telephonic hearing, the Petitioner was given time to submit additional documentation addressing the matters raised during the hearing. The additional documentation was provided to FSA and they have responded.

The issues before me are whether the Petitioner, a federal employee, owes a debt to the Respondent, whether the debt is eligible to be the subject of an offset, and if so, the

amount of the debt. Once the amount of the debt is determined, the Administrative Law Judge is also required to determine the percentage of disposable pay to be deducted in satisfaction of the debt.

The underlying obligation in this case arises from a loan made through Farmers Home Administration (now FSA) dated September 19, 1997 to Black Bear Cattle Co., a West Virginia corporation of which the Petitioner was an officer. The loan was for operating expenses and was in the amount of One Hundred Fifty Thousand Eight Hundred Fifty-One Dollars and Seventy-One Cents (\$150,851.71).¹ The loan documents were executed by Steven R. Johnston, the corporation's President, Richard L. Blackwood, its Treasurer and Secretary, by Steven R. Johnston and Richard L. Blackwood, both individually.

The Petitioner does not deny execution of the note but contests the amount alleged due. He alleges that the dispute as to amount is due to the lack of servicing and failure to follow proper procedures on the part of Bank of Greenville and Farm Services Agency. He also argues that 7 C.F.R. § 1951.111 precludes salary offset as his federal salary was identified on the farm and home plan to pay other expenses and not farm related expenses, alleges that FSA failed to provide him a copy of "all records and related correspondence" as requested free of charge and that because the timelines set forth in 7 C.F.R. § 1951.111(e)(11) have not been met the salary offset should be waived.

Heads of agencies are mandated by the Federal Debt Collection Act, 31 U.S.C. § 3711, to "take all appropriate steps to collect [a delinquent] debt" including "Federal

¹ The Real Estate Deed of Trust included as part of the documentation submitted with the file reflects that two loans were made on September 19, 1997. In addition to the loan at issue in this action, there was an additional loan in the amount of \$24,389.40.

Salary Offset.” The statutory basis for offsetting the salary of a federal employee is found in 5 U.S.C. § 5514:

(a)(1) When the head of an agency or his designee determines that an employee.... is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination....the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals from the current pay account of the individual....The amount deducted for any period may not exceed 15 percent of disposable pay....

Before an offset can be effectuated, the statute requires notice to the employee and an explanation of the employee’s rights which include the right to inspect and copy Government records relating to the debt, the opportunity to enter into a written agreement to repay the debt according to a mutually agreed upon schedule and an opportunity for a hearing on the determination of the agency concerning the existence or amount of the debt, and in the case of an individual whose repayment schedule is established other than by a written agreement, upon the terms of the repayment schedule. 5 U.S.C. § 5514 (a)(2).

The implementing regulations are found in 7 C.F.R. Subpart C §§ 1951.101 *et seq.* and contain specific requirements for the petition for a hearing, direct that the hearings be conducted by an appropriately designated hearing official upon all relevant evidence and place the burden of proof upon the agency to prove the existence of the debt and upon the employee for the ultimate burden of proof once the debt is established.

The file reflects that the procedural prerequisite of notice was properly given by letter dated November 8, 2004. While the Petitioner complains that he was not provided with all of the documents he requested free of charge, it is clear that by letter dated December 17, 2004, he was provided copies of pertinent documents, afforded an

opportunity to inspect his complete file² upon notice so that arrangements could be made and assured that every effort would be made to provide any document relating to the existence or non-existence of the debt. As 7 C.F.R. § 1951.111(f) expressly makes reference to costs of copies, his complaint concerning not being provided material without cost beyond what was provided (given the size and volume of material contained in the complete file) is without merit. Similarly, although the Petitioner indicates that amount of the debt is disputed due to lack of servicing and failure to follow proper procedure, no specific deficiencies have been raised or documented.

The Petitioner next asserts that the following language contained in 7 C.F.R. § 1951.111 precludes salary offset in his case:

In addition, for Farm Loan Program direct loans, salary offset will not be instituted if the Federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan.

The Farm and Home Plan is a financial and cash flow statement used for active loans. In this case, the loan was made in the name of Black Bear Cattle Company and the Petitioner's salary was not considered in the corporation's plan.³ Accordingly, I find that the cited language does not apply in this case.

The Petitioner suggests that because the regulatory timeline set forth in 7 C.F.R. § 1951.111(e)(11) was not met in this case that the salary offset should be waived. For some years prior to 2005, USDA salary offset cases were sent pursuant to a contractual arrangement to the Veterans Administration for decision. Sometime near the end of 2004, the Veterans Administration decided to terminate their agreement to continue hearing the

² According to the Agency Response, the Petitioner's file consists of 9 separate files over 12 inches thick.

³ Even were this not the case, Farm Service Agency indicates that it is the interpretation of the agency that this reference only applies to borrowers that have active plans (for the current year) with the agency. Mr. Blackwood has no current plan.

cases and the cases were referred to Administrative Law Judges with the Department of Agriculture⁴. While the timeline has not been met in this case, not all of the delay in reaching a decision was caused by FSA as some difficulty was encountered by the Judge's staff in securing the Petitioner's availability. It is however clear that the Petitioner has not been prejudiced by the passage of time as, in fact, the additional time taken to reach the decision has operated to the advantage of the Petitioner by delaying implementation of the offset. Waiver of the offset under these circumstances is not appropriate.

The evidence of record establishes that the Petitioner is indebted to the United States of America in the amount of One Hundred Six Thousand, Eight Hundred Ninety-Two Dollars and Seventy-Three Cents (\$106,892.73) as of August 10, 2005, representing a principal balance of \$95,128.01, interest accrued through August 10, 2005 and additional interest at the annual rate of 5.00% accruing at the rate of \$13.0312 per day.

Accordingly, the following Findings of Fact and Conclusions of Law will be entered.

FINDINGS OF FACT

1. Black Bear Cattle Company, a West Virginia corporation, applied for and received a loan from Farmers Home Administration (now FSA) in the amount of \$150,851.71 and on September 19, 1997 in consideration of the loan, the corporation by and through its corporate officers, including the Petitioner, executed and delivered to FSA a promissory note and Real Estate Deed of Trust. The Promissory Note was also executed by the Petitioner and the President of the corporation individually.

⁴ 7 C.F.R. § 1951.111(g) indicates that the hearing officer must be a USDA Administrative Law Judge or a person who is not a USDA employee.

2. The Petitioner is an employee of the United States Department of Agriculture and as such is an individual whose salary is subject to federal offset.

3. The Petitioner was given notice of the proposed offset of his federal salary and the notice dated November 8, 2004 is in full compliance with the statutory requirements of 5 U.S.C. § 5514 and the implementing regulations.

4. The Petitioner is currently indebted to FSA in the amount of \$106,892.73 together with accrued interest from and after August 10, 2005, with additional interest accruing at the rate of \$13.0312 per day.

CONCLUSIONS OF LAW

1. By executing the promissory note in the amount of \$150,851.71 dated September 19, 1997 to Farmers Home Administration (now FSA), Richard L. Blackwood is a joint obligor for any outstanding balance owed to FSA.

2. Richard L. Blackwood, as an employee of the United States Department of Agriculture, is an employee against whom an offset of his federal salary may be effected.

3. The notice of proposed offset dated November 8, 2004 complied with all statutory and regulatory requirements for offsetting his salary.

4. There are no legal restrictions to the debt within the meaning of 7 C.F.R. §1951.111(c)(2).

5. The provisions contained in 7 C.F.R. § 1951.111 precluding the use of salary offset in cases where the Federal salary has been considered in the Farm and Home Plan and it was determined the funds were to be used for a purpose other than payment on the USDA Agency loan are not applicable under the facts of this case.

6. The amount owed to FSA as of August 10, 2005 is \$106,892.73 together with interest accruing from and after that date at the rate of \$13.0312 per day.

7. FSA is entitled to offset 15% of the Petitioner's disposable federal pay as defined in 7 C.F.R. § 1951.111(b)(4) until the same shall be paid in full.

Copies of this Decision shall be served on the parties by the Hearing Clerk's Office.

Done at Washington, D.C.
October 25, 2005

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Richard L. Blackwood
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