

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2016 MAY 26 PM 1:45

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Docket No. 16-0075

In re:

CHARLES MAXIMOWICZ,

Petitioner.

**ORDER VACATING DECISION AND ORDER FILED MAY 13, 2016 AND
DISMISSING PETITION AS MOOT**

On April 8, 2016, Charles Maximowicz (“Petitioner”) requested a hearing pursuant to the regulations governing Federal Salary Offset (7 C.F.R. Subpart G, 7 C.F.R. § 3.70 *et seq.*). The purpose of the hearing was to determine whether Petitioner owed a debt to the Office of Administrative and Financial Management (“AFM”; “Respondent”) of the United States Department of Agriculture (“USDA”) and, if so, the propriety of imposing administrative wage offset.

On May 11, 2016, the Hearing Clerk’s Office received a copy of an email dated April 26, 2016 in which Renee Picanso, Associate Director of the National Agricultural Statistics Service (“NASS”), notified Petitioner of a “retirement code error update.” Due to a clerical error, however, OALJ was not immediately notified of the correspondence. The email advised that NASS would pay the employee retirement contributions that Petitioner had been retroactively billed for. Specifically, the email stated:

. . . Today, I can share that the USDA Office of General Counsel has now authorized NASS to pay the employee contribution to the Federal Employee Retirement System (FERS) for which you were being retroactively billed. This was

a long and tedious path that has thankfully led us to a favorable outcome. As of now:

- All bills for employee insufficient contributions from the day you were hired until the error was corrected have been cancelled.
- If you do see another payroll deduction for retroactive payment, please contact Paulicia Cato (Paulicia.Cato@ARS.USDA.GOV) immediately so she can address the issue.
- You will be reimbursed for any retroactive payments you have made, whether through payroll deductions or through a lump sum payment.

You will not be back-billed further and you will be reimbursed for any payments you have made. Your current and future retirement contributions will continue to be at the corrected level as indicated by law based on your hiring date. It may take some time before you receive the reimbursement, as it will require actions by AFM, the National Finance Center, and others whose timing is outside NASS control. However, we wanted to notify you of this good news as soon as possible. We will continue to stay on top of the issue until each of your individual situations has been resolved.

On May 12, 2016, Administrative Law Judge Janice K. Bullard (“Judge Bullard”) conducted a telephonic hearing in the matter. Petitioner appeared as his own representative and testified. Vivian Brooks-Marshall, Operations Specialist, Office of the Director, National Institute of Food and Agriculture, represented Respondent and testified.

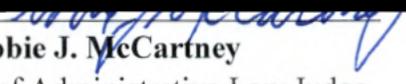
On May 13, 2016, Judge Bullard issued a Decision and Order subjecting Petitioner to salary offset and holding Petitioner responsible for the government’s overpayments to the retirement system. The Decision and Order did not take into account the April 26, 2016 correspondence that was received by the Hearing Clerk’s Office two days prior.

Upon consideration of the newly acquired evidence in this matter, I find that the Decision and Order must be vacated. I further find that the April 26, 2016 correspondence from NASS referenced *supra* provides Petitioner with the relief requested in the Petition and, therefore, that the Petition should be, and the same hereby is, dismissed as moot.

Accordingly, it is hereby ordered that the Decision and Order entered May 13, 2016 is **VACATED** and the Petition is **DISMISSED**.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk via regular mail.

So ORDERED this 26th day of May, 2016, at Washington, D.C.



Bobbie J. McCartney
Chief Administrative Law Judge