

Surface Transportation Board, DOT

§1017.7

(10) A statement that knowingly false or frivolous statements, representations, or evidence may subject the former employee to appropriate criminal penalties (i.e., for false certification, etc.);

(11) A statement of other rights and remedies available to the former employee under statutes or regulations governing the program for which the collection is being made; and

(12) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the former employee.

[56 FR 32333, July 16, 1991, as amended at 64 FR 53267, Oct. 1, 1999]

§1017.5 Hearing procedures.

(a) Upon the Administrative Law Judge's determination of an employee's compliance with §1017.4(b)(8) or §1017.4(c)(7) of this part, whichever is applicable, he/she shall set the time, date, and location for the hearing, paying due consideration to convenience to the employee.

(b) All significant matters discussed at the hearing shall be documented, although a verbatim transcript of the hearing shall not be made.

(c) The Administrative Law Judge may exclude any evidence he/she deems irrelevant, immaterial, or unduly repetitious.

(d) Any party to a hearing under these regulations is entitled to present his or her case or defense by oral or documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) The Board has the initial burden of proof as to the existence and amount of the debt.

(f) The employee requesting the hearing shall bear the ultimate burden of proof.

(g) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt that reasonable minds could differ as to the existence or amount of the debt.

(h) Where the employee files a petition for a hearing contesting the offset schedule imposed by the Board, the Ad-

ministrative Law Judge shall take into consideration all relevant factors as to the employee's financial situation in determining whether said offset schedule should be altered.

(i) Any party to a hearing under these regulations is entitled to be accompanied, represented, and advised by counsel, as well as to appear in person or by or with counsel.

(j) The Administrative Law Judge shall issue a final written decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing, as stated in §1017.4(b)(10) or §1017.4(c)(9) of this part, whichever is applicable.

§1017.6 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the Board's offset schedule if the employee:

(a) Fails to file a petition for a hearing in conformity with the requirements of §1017.4(b)(8) or §1017.4(c)(9) of this part, whichever is applicable. However, failure to file within the requisite time period set out in §1017.4(b)(8) or §1017.4(c)(9) of this part whichever is applicable, will not result in denial of a hearing or in immediate offset, if the Administrative Law Judge excuses the late filing if the employee can show that the delay was because of circumstances beyond his/her control or because of failure to receive notice of the filing deadline.

(b) Is scheduled to appear and fails to appear at the hearing without good cause.

§1017.7 Written decision following hearing.

(a) Written decisions provided after a request for a hearing will include:

(1) A statement of the facts presented to support the nature and origin of the alleged debt;

(2) The Administrative Law Judge's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Board's grounds;

(3) The amount and validity of the alleged debt; and

(4) The repayment schedule (including percentage), if applicable.

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(b) The Administrative Law Judge's decision does not preclude an employee from requesting a waiver of a salary payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to GAO in accordance with procedures prescribed by GAO.

§1017.8 Exception to entitlement to notice, hearing, written responses and final decisions.

The Board shall except from the provisions of §1017.4 through §1017.7 any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program, requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§1017.9 Coordinating offset with another Federal agency.

(a) *The Board as creditor agency.* When the Chief, Section of Financial Services, determines that an employee of another Federal agency owes a delinquent debt to the Board, he/she shall:

(1) Arrange for a hearing upon proper petitioning by the employee;

(2) Certify in writing to the other Federal agency that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, that the Board's regulations for administrative offset have been approved by the Office of Personnel Management, and that the provisions of 4 CFR 102.3(f) have been fully complied with;

(3) If collection must be made in installments, advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(4) Advise the paying agency of any action taken under 5 U.S.C. 5514(a);

(5) If the employee is in the process of separating, the Board must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency—if the paying agency is aware that the employee is entitled

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to money from the Civil Service Retirement and Disability Fund, it must certify to the Office of Personnel Management (OPM) that:

(i) The debtor owes the U.S. a debt, including the amount of that debt;

(ii) The Board has complied with the applicable statutes, regulations, and procedures of OPM; and

(iii) The Board has complied with the requirements of 4 CFR 102.3, including any hearing or review; and

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Chief, Section of Financial Services, may request from OPM, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset and provide the certification described in paragraph (a)(5) of this section.

(b) *The Board as paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Board has received a certified debt claim from the creditor agency, the amount of the debt, the date administrative offset will begin, and the amount of the deduction(s). The Board shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) When the Board receives an incomplete debt from another (creditor) agency, the Board must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR 1108 must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Board and before the debt is fully collected, the Board must certify the total amount collected to the creditor agency, along with notice of the transfer, and furnish a copy of same to the employee.

[56 FR 32333, July 16, 1991, as amended at 64 FR 53267, Oct. 1, 1999]