DATE: March 30, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05021409

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

In the absence of express language or a clear implication in the statute or legislative history, a member's entitlement to reimbursement for expenses incurred for an adoption arranged by a foreign government or an agency authorized by a foreign government to place children for adoption, is prospective only, from the date of enactment of Public Law 108-375, October 28, 2004. There is therefore no authority to pay qualifying adoption expenses a member incurred prior to that date.

DECISION

The member requests reconsideration of the January 26, 2005, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 04122101.

Background

The member seeks reimbursement for attorneys fees incurred from his 2003 adoption of his wife's nieces. The member and his wife retained counsel to file a petition to adopt the two girls (both minor citizens of the Philippines). They paid 200,000 pesos (equivalent to $4,000) in legal fees to a law firm located in Angeles City, Republic of the Philippines, for the petition to adopt. The petition was subsequently filed in the Regional Trial Court in Angeles City, Republic of the Philippines. On February 28, 2003, the Court ordered that effective July 24, 2002, the two girls were the adopted children of the member and his wife. On July 24, 2003, a final decree of adoption was entered.

On August 5, 2003, the member completed a DD Form 2675, Reimbursement Request for Adoption Expenses, for each of the girls, requesting reimbursement in the total amount of $4,000. The Defense Finance & Accounting Service (DFAS) denied the member's claim for adoption expenses because the adoptions were not arranged by a qualified adoption agency as required under 10 U.S.C. § 1052(g)(3), and Department of Defense Financial Management Regulation (DoDFMR), Volume 7C, Chapter 4. On appeal, our Office agreed with DFAS and disallowed the member's claim.

In the member's request for reconsideration, he implies that his situation falls under 10 U.S.C. § 1052(g)(3)(C); he states that attorneys and social workers work together to place children for adoption in the Philippines with final authority resting with the Filipino courts. The member further states that the Regional Trial Court meets the definition of a "qualified adoption agency" in 10 U.S.C. §1052(g)(3)(D); he asserts that even though subparagraph (D) was not added to the statute until October 28, 2004, Congress obviously intended to correct DoD's interpretation of the statute. Therefore, he states that this 2004 amendment should be used as evidence of Congress' intent from the statute's original enactment, and not as a bar to his reimbursement.

Discussion

Section 1052 of Title 10 of the United States Code, directs the Secretary of Defense to reimburse members for qualifying adoption expenses, as set forth under the statute. The statute directs the Secretary to prescribe implementing regulations which, in part, are found in Chapter 4, Volume 7C of the Department of Defense Financial anagement Regulation (DoDFMR).[(1)] Under the statute and regulations, reimbursement for qualifying adoption expenses is authorized to a member adopting a minor child only if the adoption is arranged by a "qualified adoption agency."

In the present case, at the time the member incurred the expenses by adopting the two girls, 10 U.S.C. §1052 (g)(3) defined qualified adoption agency as:

"(A) A State or local government agency which has responsibility under

State or local law for child placement through adoption.

(B) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(C) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law."

Under the implementing regulations, Chapter 4, Volume 7C of the DoDFMR, paragraph 040404, "State or local" as used in the statute, refers to a state or locality in the United States.

It is well-established that the interpretation of a statutory provision, as expressed in the implementing regulations by the agency responsible for execution of the statute, is entitled to great deference and will be sustained and deemed to be consistent with congressional intent unless found to be arbitrary, capricious, an abuse of discretion or contrary to the statutory purpose. *See* DOHA Claims Case Nos. 02101611 through 02101635 (December 12, 2002). Interpretation of a statute is permissible if it reflects a plausible construction of the plain language of the statute and does not otherwise conflict with Congress' expressed intent. *SeeChevron v. Natural Resources Defense Council,* 467 U.S. 837, 843 (1984). Words in a statute will be interpreted consistent with their ordinary, contemporary, common meaning. *SeeMallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 301 (1989). In the present case, although the phrase "State or local" is not specifically defined in 10 U.S.C. § 1052, in the definition section of Title 10, the "United States" is defined, in a geographic sense, as "the States and the District of Columbia."[(2)] Congress' use of a capital "S" in the phrase "State or local" in 10 U.S.C. § 1052 mirrors this geographic definition, and reflects a clear implication of Congress' intent to embrace the fifty states of the United States and the District of Columbia with the

word "State." Comparing 10 U.S.C. §1052 with other statutes under Title 10 strengthens the argument that Congress used "State or local" to mean a state or locality in the United States.[(3)] This is further supported by Congress' consistent use of "State" in other federal statutes.[(4)] Thus, DoD's interpretation of "State or local" as expressed in the DoDFMR meets the standard of statutory construction, and therefore, must be accepted. The member's argument that his situation meets the definition under § 1052(g)(3)(C), because social workers and attorneys in the Philippines may work together to place children for adoption, fails because his use of the private foreign law firm to petition for the adoption was not authorized by any state within the United States and was not supervised by a court under any state or local law within the United States.

The member further argues that the 2004 amendment to the statute shows that Congress meant to correct DFAS' "misinterpretation" of the statute. Section 661 of Public Law 108-375, October 28, 2004, amended 10 U.S.C. § 1052 by adding subparagraph (D) to paragraph (g)(3).[(5)] Since the change in the law adding (g)(3)(D) was not explicitly made retroactive, it does not apply to reimbursement for adoptions made prior to the effective date of the legislation, October 28, 2004. *See* 70 Comp. Gen. 723 (1991), and B-183290, Aug. 21, 1975. The statutory language of 10 U.S.C. § 1052 does not state that any entitlements arising under its authority should be provided retroactively, nor does anything in the legislative history indicate that such entitlement was meant to be retroactive. Even if the amended 10 U.S.C. § 1052 may have otherwise allowed reimbursement of the member's expenses if incurred on or after October 28, 2004, the Claims Appeals Board must base its decisions on the relevant laws and regulations in effect at the time of the adoption in question. Where there is no provision in the statute or regulations for reimbursement, we cannot allow payment. *See* DOHA Claims Case No. 96123013 (June 2, 1997).

Conclusion

For the reasons stated, the request for reconsideration is denied, and the appeal decision is sustained. In accordance with 32 C.F.R. Part 282, Appendix E, paragraph o(2), this is the final Department of Defense action in this matter.

_____/s/_____
ichael D. Hipple
Chairman, Claims Appeals Board

_____/s/_____
Jean E. Smallin
ember, Claims Appeals Board

_____/s/_____
Catherine M. Engstrom
ember, Claims Appeals Board

1. Department of Department Instruction, Number 1341.9 (July 29, 1993), establishes policy, assigns responsibilities and prescribes procedures for the reimbursement of qualifying adoption expenses incurred by members of the Military Services. Under the Instruction, the Comptroller has been delegated the responsibility for prescribing and implementing procedures for the paying of claims for reimbursement. The Comptroller has set forth these procedures in the DoDFMR.

2. *See* 10 U.S.C. § 101(a)(1).

3. *See* 10 U.S.C. § 371, 10 U.S.C. § 372, 10 U.S.C. § 373, 10 U.S.C. § 374, 10 U.S.C.

§ 1046, 10 U.S.C. § 1798, employing the terms "State" and "local"; *see* 10 U.S.C. § 381 and 10 U.S.C. § 1103, expanding the definition of "State" to include the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each Territory and possession of the United States; *and see* 10 U.S.C. §182, employing "State or local government" with "any foreign government."

4. We note that under Chapter 1 of Title 1 of the United States Code, *Rules of Construction*, "The word 'county' includes a parish, or any other equivalent subdivision of a State or Territory of the United States."

5. Under subparagraph (g)(3)(D), a qualified adoption agency is now further defined as, "A foreign government or agency authorized by a foreign government to place children for adoption, in any case in which - (I) the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act; or (II) a certificate of citizenship has been issued for such child under section 322 of that Act."