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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Scope of Professional Credentials Statute

File: B-302548

Date: August 20, 2004

DIGEST

Pursuant to 5 U.S.C. § 5757(a), federal agencies are authorized to use appropriated funds to pay an employee's expenses to obtain professional credentials. However, an agency may pay only the expenses required to obtain the license or official certification needed to practice a particular profession, including licensing fees and examinations to obtain credentials. Accordingly, section 5757(a) does not authorize the agency to pay for an employee's membership in a professional association unless membership is a prerequisite to obtaining the professional license or certification. Under 5 U.S.C. § 5946 payment for voluntary memberships in organizations of already-credentialed professionals is prohibited, and section 5757(a) does not provide any authority to pay such fees.

DECISION

Pursuant to 31 U.S.C. § 3529(a), a certifying officer at the Department of Agriculture's Risk Management Agency requested an advance decision whether section 5757(a) of title 5, United States Code, authorizes an agency to pay for an employee's membership in a professional association if membership is not a requirement for obtaining a license or certification. Section 5757(a) allows federal agencies to use appropriated funds to pay the expenses of an employee to obtain professional credentials. As explained below, section 5757(a) does not authorize agencies to pay for the membership of an employee in a professional association unless membership is a prerequisite for the employee to obtain required credentials, such as a license to practice a profession. Payment of the cost of voluntary membership in a group of professionals who are already credentialed is prohibited by 5 U.S.C. § 5946.

BACKGROUND

A Risk Management Agency employee asked the agency to pay for her Certified Public Accountant (CPA) license as well as membership in the California Society of Certified Public Accountants (CalCPA). Membership in CalCPA is voluntary and not a prerequisite to obtaining a CPA license.[1] In addition to the payment of a license fee, applicants for a CPA license in California have to meet certain education and experience requirements, pass the Uniform CPA Examination and the California Professional Ethics Examination, undergo a criminal history record check, and, once licensed, meet continuing education and license renewal requirements. *See* California Board of Accountancy, *Information Handbook for the Certified Public Accountant Applicant,* No. 11A-54 (January 2004).[2]

A Risk Management Agency certifying officer determined that the agency had the authority to pay the CPA license fee pursuant to 5 U.S.C. § 5757(a), which reads in relevant part as follows:

> "(a) An agency may use appropriated funds or funds otherwise available to the agency to pay for --
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> > (1) expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and
> >
> > (2) examinations to obtain such credentials."

Because the certifying officer was uncertain whether section 5757(a) applied to a membership fee that was not a condition of obtaining the CPA license, the certifying officer asked us for an advance decision under 31 U.S.C. § 3529(a) whether section 5757(a) authorizes an agency to use appropriated funds for membership in a professional society or association if such membership is not a condition for obtaining the credentials required to practice that profession.

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[1] We verified with the California State Board of Accountancy that membership in CalCPA is not required to obtain a CPA license in California. Letter from Carol Sigmann, Executive Officer, California Board of Accountancy, to Thomas H. Armstrong, Assistant General Counsel, U.S. General Accounting Office, Mar. 17, 2004 (Sigmann Letter).

[2] The *Handbook* is accessible at http://www.dca.ca.gov/cba/toc.htm (last visited July 29, 2004).

ANALYSIS

Professional Credentials

Generally, personal expenses are not payable from appropriated funds absent specific statutory authority. B-261729, Apr. 1, 1996; 72 Comp. Gen. 225, 227 (1993). We have held that expenses necessary to qualify a government employee to do his or her job are personal expenses, and as such, are not chargeable to appropriated funds. 61 Comp. Gen. 357 (1982). As we explained in B-286026, June 12, 2001, as early as 1890 the Supreme Court held that "it is the duty of persons receiving appointments from the government . . . to qualify themselves for the office." *United States v. Duzee,* 140 U.S. 169, 171 (1890). Our decisions have applied this rule on numerous occasions. In 61 Comp. Gen. 357 (1982), for example, we held that an agency could not pay the costs of bar review courses or bar membership fees for its attorneys because these expenses are personal expenses related to qualifying for office. *See also* B-260771, Oct. 11, 1995 (appropriated funds could not be used to cover the cost of obtaining a Certified Government Manager designation); 46 Comp. Gen. 695 (1976) (appropriated funds could not be used for medical licensing fees for Public Health Service physicians).

In December 2001, Congress specifically provided agencies the authority to use appropriated funds to pay expenses for their employees to obtain professional credentials. National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, § 1112(a), 115 Stat. 1012, 1238 (Dec. 28, 2001), codified at 5 U.S.C. § 5757.[3] But for this statutory authority, appropriations would not be available for this purpose. 61 Comp. Gen. 357 (1982). The statutory language does not create an entitlement to payment; instead, it authorizes agencies to consider such expenses as payable from agency appropriations if the agency chooses to cover them.

Consistent with our regular practice, we solicited the Department's legal position on the use of Risk Management Agency appropriations to pay for an employee's membership in CalCPA. Letter from Thomas H. Armstrong, Assistant General Counsel, U.S. General Accounting Office, to Nancy Bryson, General Counsel, U.S. Department of Agriculture, Mar. 5, 2004. The Department has advised us that membership in CalCPA is not an authorized agency expenditure because it is neither tied directly to obtaining official documentation of professional authority nor is it a prerequisite to obtaining such documentation. Letter from Kenneth E. Cohen, Assistant General Counsel, General Law Division, U.S. Department of Agriculture to

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[3] In Pub. L. No. 107-273, § 207(a), 116 Stat. 1757, 1779–1780 (Nov. 2, 2002), Congress enacted another section 5757 of title 5 of the United States Code. There are now two sections in the Code numbered 5757 which are not related.

Thomas H. Armstrong, Assistant General Counsel, U.S. General Accounting Office, Apr. 2, 2004.

The Department, referring to the ordinary meaning of the terms in the statute, said that "the terms credential, accreditation, and certification mean they are required components for an individual to practice in his or her profession." *Id.* at 2. The Department pointed out that Webster's New Collegiate Dictionary (1979) defines "credential" as "something that gives a title to credit or confidence," "accredit" as "to give official authorization or approval to," and "certification" as "the act of certifying [to attest authoritatively]." The Department stated that "these definitions suggest that 'professional credentials' would include only those items that are official documentation of professional authority . . . . Membership in the California Society of Certified Public Accountants does not bestow any sort of professional credential upon its members." *Id.*

We agree with the Department. As the Department explained in its letter to us, in order to interpret congressional intent regarding the meaning of the statute, one begins by looking first to the language of the statute itself. *Mallard v. United States District Court,* 490 U.S. 296, 300--301 (1989). The meaning of the statutory language is the ordinary, everyday meaning rather than some obscure usage. *E.g., Mallard,* 490 U.S. at 301; 38 Comp. Gen. 812 (1959). The primary vehicle that Congress uses to express its intent is the words it enacts into law. *See, e.g.*, *Hartford Underwriters Insurance Co. v. Union Planters Bank, N.A.,* 530 U.S. 1 (2000); *Robinson v. Shell Oil Co.,* 519 U.S. 337 (1997).

The plain meaning of the language in section 5757(a) suggests that professional credentials would include only those items that are required for an individual to be licensed or otherwise certified to practice a particular profession. It speaks in terms of accreditation, licenses, and certification--terms ordinarily used and commonly understood to refer to permission conferred on an individual by a regulatory body to engage in the practice of a regulated profession. Some types of documentation of regulatory authorization that would demonstrate an employee's qualification to work in a specific professional area include annual state bar membership, CPA licenses, medical licenses, court admission fees required of attorneys for admission to practice before a court if admission is necessary to carry out an agency's statutory mission, teacher certifications, and other certifications that permit an employee to practice in a professional area.

In our view, section 5757(a) also permits an agency to pay for certain costs related to licensing which, although they are not licensing fees, are required in order for the employee to obtain the license. For example, where attorneys licensed to practice law are required to be members of state bar associations in order to maintain their license to practice, agencies may pay the costs of those memberships. In this regard, we distinguish state bar membership, necessary to maintain a license to practice, from membership in professional associations such as the American Bar Association or the Federal Bar Association, which is not a condition of a license. Similarly, in

this case, CalCPA membership is not a prerequisite to obtain, or a requirement to maintain, a CPA license in California.[4] Section 5757(a), consequently, does not authorize the Risk Management Agency to use appropriated funds to pay for CalCPA membership.

Reduced Costs of Training

The Risk Management Agency employee requesting payment of her CalCPA membership fee justifies agency reimbursement of the fee as a cost of training; she argues that membership in CalCPA is an economical way of obtaining the mandatory continuing education that is required by the California State Board of Accountancy. Licensed CPAs in California are required to take 40 hours of continuing education classes each year to maintain their eligibility for the license. The Education Foundation of CalCPA offers courses, and the employee notes that the Foundation provides discounts on course fees to CalCPA members. The employee states that the amount of the discounts would cover the annual dues for those members taking 40 or more hours of training through the Foundation.[5]

Section 5946 of title 5 of the United States Code, however, prohibits agencies from paying for individual employee membership in a society or association without specific statutory authority. 68 Comp. Gen. 606 (1989); 46 Comp. Gen. 135, 136–137 (1966). The fact that there may be some collateral benefit to the government from the employee's membership in an organization, such as the discounts here, is not sufficient to overcome this prohibition against payment of membership fees. *See, e.g.,* 53 Comp. Gen. 429 (1973); 52 Comp. Gen. 495 (1973); B-205768, Mar. 2, 1982.

Agencies have authority pursuant to the Government Employees Training Act, 5 U.S.C. § 4109, to pay for employee training. Nevertheless, agencies generally do not have the authority to pay for membership fees unless "the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent to undergoing the training." 5 U.S.C. § 4109(b). Here, membership in CalCPA is not a necessary cost of the training nor a condition precedent to undergoing the training. Thus, section 4109 does not apply.

Accordingly, the Risk Management Agency, pursuant to section 4109, may pay for the employee to participate in any training that CalCPA offers, but not for the employee's CalCPA membership fees.

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[4] Sigmann Letter (see footnote 1 *infra*).

[5] The Risk Management Agency employee's statements were contained in an e-mail she wrote to her Office Manager, which was forwarded to GAO on May 25, 2004, for inclusion in the record.

Agency Membership

The Risk Management Agency employee requesting payment of the membership fee argues that the agency has the authority to pay for the CalCPA membership fee because the employee's membership benefits the agency.[6] The employee states that her membership in CalCPA and her participation in CalCPA-sponsored conferences will help the Department of Agriculture maintain its credibility with the CPAs throughout California with whom Department CPAs work on a regular basis.

Although section 5946 prohibits the Risk Management Agency from paying for the employee's membership, if the agency determines that the agency will benefit from an agency, as opposed to an individual employee, membership in the association, it may obtain a membership in the agency's name. *See, e.g.*, 52 Comp. Gen. 495 (1973) (Department of Justice may not pay an employee's membership fee in a professional organization even though savings would accrue to the government from reduced subscription rates for professional publications and the government would benefit from the employee's development as a result of the membership; Justice, however, may become a member in its own name if membership is necessary in carrying out authorized agency activities). *See also* 53 Comp. Gen 429 (1973); B-221569, June 2, 1986; B-205768, Mar. 2, 1982. The agency must determine that such membership is of primary benefit to the government and is necessary to carry out its statutory function. *Id.*

Accordingly, the Department of Agriculture, at its discretion, may pay for an agency membership in CalCPA, in its own name or in the name of the Risk Management Agency, if such membership is of primary benefit to the government and the Department determines that such membership is necessary to carry out its statutory function.

CONCLUSION

Pursuant to 5 U.S.C. § 5757(a), federal agencies are authorized to use appropriated funds to pay the expenses of an employee to obtain professional credentials, but an agency may only pay employee expenses necessary to qualify for a particular profession. Agency payment of fees for voluntary memberships in organizations of already-credentialed professionals is prohibited under 5 U.S.C. § 5946. Accordingly,

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[6] *See* note 5.

the Risk Management Agency does not have authority under section 5757 to pay for an employee's membership in a professional association if membership is not a prerequisite for the employee to obtain qualification.

Anthony H. Gamboa
General Counsel