

STATE OF FLORIDA

BOARD OF ACCOUNTANCY

**IN RE: PETITION FOR VARIANCE BY
EMILIO BUSTILLO**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/6/2019
File #	2019-01968

VW 2018-253

ORDER GRANTING PETITION

Petitioner, Emilio Bustillo, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on December 20, 2018. The Notice of the petition appeared in the Florida Administrative Register on January 4, 2019, in Volume 45 Number 03. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on February 1, 2019, in Orlando, Florida. Petitioner was present. The Board was represented by Rachelle Munson, Assistant Attorney General. The petition is attached herein and incorporated by reference.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. **Rule 61H1-28.0052(1)(b), FAC**, provides in pertinent part:

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed.

2. Petitioner passed the REG portion of the CPA examination on February 22, 2017, and credit for that portion of the examination expired on August 22, 2018. Petitioner passed the FAR portion of the examination on June 25, 2018, and credit for that portion of the examination expired on December 25, 2019. Petitioner passed the AUD portion of the examination on September 10, 2018, and credit for that portion of the examination will expire on March 10, 2020. Petitioner passed the BEC portion of the CPA examination on December 18, 2018, and credit for that portion of the examination will expire on June 18, 2020.

3. During the 18-month window, Petitioner states that he experienced health issues requiring medically necessary surgery on February 8, 2018, July 10, 2018, and December 10, 2018.

Petitioner states that the health issues did not allow him adequate time to successfully sit for the remaining sections of the CPA examination within the required time frame. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of three (3) months and twenty-six (26) days beyond the eighteen months provided in the rule to retain the passing scores on the REG portion of the examination, when he passed the fourth portion of the examination on December 18, 2018.

GROUNDS FOR APPROVAL

The Board determined the petition should be granted on the following grounds:

4. Petitioner established that the Board's full application of Rule 61H1-28.0052(1)(b), FAC, to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

5. Petitioner established that, if he were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, FS.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 27th day of February, 2019, by the
Florida Board of Accountancy.



Veloria A. Kelly, Division Director

NOTICE OF RIGHT TO HEARING

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Division Director of the Board, 240 Northwest 76th Drive, Suite A, Gainesville FL 32607, **within 21 days** of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, a copy of which is enclosed, including a

statement of the material facts which are in dispute. If you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code, a copy of which is enclosed. If you request a hearing, you have the right to be represented by an attorney or other qualified representative, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued, and to present written evidence or argument.

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation pursuant to that section is not available.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified mail to **Emilio Bustillo**, 2016 Chuli Nene, Tallahassee, Florida 32301, and to Kenneth Plante, Chief Attorney, Joint Administrative Procedures Committee, 111 W. Madison Street, Pepper Building, Room 680, Tallahassee, Florida 32399-1400, and by electronic delivery to: Rachelle Munson, Assistant Attorney General, at Rachelle.Munson@myfloridalegal.com this 6th day of March, 2019.

Brandon M. Nichols

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 12/20/2018
File #

PETITION FOR VARIANCE FROM RULE 61HI-28.0052(1)(b)

18 Month Rule

Petitioner Information:

Emilio Gabriel Bustillo
2016 Chuli Nene, Tallahassee, FL 32301
(305) 972-2286

RECEIVED
12/20/2018

Attorney Information:

Not Applicable

VW 2018-253

Applicable Portions of the rules:

61HI-28.0052(1)(b) Number of Sittings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passes. In the event all four test sections of the CPA Examination are not passed within the eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

The citation to the statute the rule is implementing:

Section 473.306 - Examination

Type of Action Requested:

The petitioner requests that the Board of Accountancy please waive Rule 61HI-28.0052(1)(b), FAC stated above due to the following circumstances.

Specific facts that demonstrate a violation of the principles of fairness that would justify a variance for the petitioner:

The petitioner has been working full-time in governmental auditing at the State of Florida Auditor General's office for four years and eight months. The petitioner passed the Regulation section on February 23, 2017, (credit expired August 22, 2018), and passed the Financial Accounting and Reporting section on June 27, 2018, passed the Auditing and Attestation Section on September 11, 2018, and passed the Business Environment and Concepts section on December 19, 2018. During the 18-month window, the petitioner experienced health issues which required visits to numerous specialists before culminating in the petitioner requiring three medically necessary surgeries on February 8, 2018, July 10, 2018 and December 10, 2018. Additionally, after the surgeries there were numerous follow up visits or additional therapy. The amount of time away from work for medical appointments, treatment and recovery prevented the petitioner from using vacation time to offset the disruption to the petitioner's study

schedule. These issues did not allow adequate preparation time to successfully sit for the remaining sections of the CPA examination within the required timeframe. (Petitioner can provide medical documentation if necessary.)

The reason why the variance requested would serve the purpose of the underlying statute:

To the petitioner's knowledge, he has met the education and work experience requirements and is of good moral character.

Petitioner Statement:

The petitioner seeks a permanent variance from Rule 61HI-28.0052(1)(b), F.A.C.