

FILED	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	3/15/2011
File #	2011-01882

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
MARLINE CEPOUDI DUROSEAU**

VW 2010-729

ORDER

Petitioner, Marline Duroseau, filed a petition for a permanent variance from Rules 61H1-27.0041(1)(b), (c), and (2), Florida Administrative Code (FAC), on December 10, 2010. The notice of the petition appeared in the Florida Administrative Weekly on January 7, 2011, in Volume 37 Number 01; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy held on January 28, in Tampa, Florida. At the hearing on this matter, Petitioner was present and not represented by counsel. The Board was represented by Mary Ellen Clark, Assistant Attorney General.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA) who passed the fourth portion of the CPA examination on or about September 22, 2010.
2. Section 473.308(4), Florida Statutes (FS), provides that an applicant for licensure must show one year of work experience (applicants who passed the examination on or before June 30, 2010, would be exempt from this requirement). Rule 61H1-27.0041, FAC, specifies the manner in which the one year of work experience must be documented.
3. Rule 61H1-27.0041(1)(b), FAC, provides that "supervised" and "supervision" mean "[t]he subjection of the applicant, during employment, to oversight, guidance and

evaluation by a supervisor who had the right to control and direct the applicant as to the result to be accomplished by the work and also as to the means by which the result was to be accomplished.”

4. Rule 61H1-27.0041(1)(c), FAC provides that “supervisor” means, “either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB).”

5. Rule 61H1-27.0041(2), FAC, provides in part that “one year of work experience shall be held and understood to mean the rendition of services such as are customarily performed by full-time, regularly employed staff employees of a certified public accountant during the normal workweek as required by the employing certified public accountant, commencing after the completion of the educational requirements set forth in subsection 61H1-27.002(3), F.A.C.”

5. Petitioner has been employed by the Quality Group, Payroll Processing and Personnel, LLC firm for over eight years. Petitioner’s work experience has been verified by the CFO, CEO, and other personnel at the firm. Petitioner’s direct supervisor for the past eight (8) years is a licensed CPA in good standing whose license is currently on inactive status.

6. Petitioner seeks a permanent variance from Rule 61H1-27.0041(1)(b), (c), and (2), FAC, to the extent necessary for the Board to find that the supervision requirements have been met and that she has met the one year work experience requirement for licensure.

Grounds for Approval

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

7. Petitioner established that the purpose of the underlying statute, Section 473.308(4)(a), FS, would be met were she to be granted a variance from the rule based upon the following:

A. Petitioner 's experience was obtained under the supervision of a licensed CPA;

B. Petitioner passed the 4th portion of the CPA examination just 84 days after the June 30, 2010 deadline.

8. Petitioner further established that the Board's application of Rules 61H1-27.0041(1)(b), and (2), FAC, to her circumstances would violate principles of fairness and would impose a substantial hardship on her.

It is therefore **ORDERED** that the petition be **GRANTED**.

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

DONE AND ORDERED this 7th day of March, 2011,
by the Florida Board of Accountancy.



Veloria A. Kelly, Division Director ✓

NOTICE TO APPLICANT

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), FS; your petition must contain the information required by Rule 28-106.201, FAC, 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), FS; your petition must include the information required by Rule 28-106.301, FAC, 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, FS, 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 Marline C. Duroseau, 350 NW 193rd Terrace, Miami, Florida 33169; Cynthia Lauriston, Esquire, 1424 South Andrews Avenue, Suite 100, Ft. Lauderdale, FL 33316 and to F. Scott Boyd, Executive Director, Joint Administrative Procedures Committee, Room 120 Holland Building, Tallahassee, Florida 32399-1300, and Mary Ellen Clark, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 15th day of March, 2011.

Brandon M. Nichols

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LAURISTON & SMART, LLC.
Attorneys At Law

1424 South Andrews Avenue
Suite 100
Fort Lauderdale, FL 33316

Telephone: (954) 745-8051
Facsimile: (954) 745-8053
Email: legalhelp@lauriston-smartlaw.com

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

MARLINE CEPOUDI DUROSEAU
350 NW 193RD Terrace,
Miami Florida 33169
(305)300-7869

Petitioner,

And

**AGENCY OF THE BOARD OF
ACCOUNTANCY**

Respondent.

VW 2010-729

PETITION FOR WAIVER OR VARIANCE FROM RULE 61H1-27.0041

COMES NOW, Petitioner, **MARLINE CEPOUDI DUROSEAU**, (hereinafter "DUROSEAU"), by and through the undersigned counsel and pursuant to Florida Administrative Code, Rules 61H1-27.0041 and 28-104, Florida Statutes §120.542; §120.54; §473.306 and §473.308 hereby Petitions the Florida Board of Accountancy (hereinafter "BOARD") for a Waiver or Variance from Rule 61H1-27.0041, "One Year Work Experience" requirement and in support of this Petition, Petitioner states as follows:

APPLICABLE RULE & STATUTE

1. This is a Petition for Waiver or Variance from Rule 61H1-27.0041, "One Year Work Experience" requirement.
2. With the exception of an applicant who has obtained their bachelor's degree prior to December 31, 2008 and who passed the licensure examination prior to June 30, 2010, Rule 61H1-27.0041 of the Florida Administrative Code specifically requires an applicant for licensure to demonstrate one year work experience.
3. Said one year work experience may be demonstrated either through supervised

employment or teaching at an accredited college or university.

4. If the applicant seeks to demonstrate said one year work experience through supervised employment, Rule 61H1-27.0041 requires said supervisor to have had the right to control and direct the applicant and requires that said supervisor is either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB). (FAC 61H1-27.0041(1)(b)(c) and (2))
5. Furthermore, Florida Statutes § 473.308(4)(a)(b) states in part that:
"an applicant for licensure after December 31, 2008, must show that he or she has had one (1) year of work experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, all of which must be verified by a certified public accountant who is licensed by a state or territory of the United States and who has supervised the applicant. This experience is acceptable if it was gained through employment in government, industry, academia, or public practice; constituted a substantial part of the applicant's duties; and was under the supervision of a certified public accountant licensed by a state or territory of the United States..." "However, an applicant who completed the requirement of subsection (3) on or before December 31, 2008, and who passes the licensure examination on or before June 30, 2010, is exempt from the requirements of this subsection"...
6. Subsection three (3) specifically refers to applicants who have completed a bachelor's degree or 150 semester hours of college education. (F.S. § 473.308(3))
7. Florida Administrative Code, Rule 61H1-27.0041 defines a supervisor as one who is "either a licensed certified public accountant in good standing with any regulating body or a chartered accountant recognized by the International Qualifications Appraisal Board (IQAB)
8. The applicant must have had direct supervision by said supervisor. That is, said supervisor must have had the right to control and direct the applicant as to the result to be accomplished, through employment, oversight, guidance and evaluation. (FAC, Rule 61H1-27.0041)
9. The work experience must either average at least twenty (20) hours a week over no more than one hundred and four (104) weeks or average no more than forty (40) hours a week over no more than fifty-two (52) weeks, with reasonable vacation and sick leave, just as customarily performed by full-time, regularly employed staff employees. (FAC, Rule 61H1-27.0041)

ACTION REQUESTED

10. Petitioner hereby respectfully requests that the Board of Accountancy permanently waive said one year requirement of Rule 61H1-27.0041, or be issued a variance based on the Petitioner's particular facts and circumstances.
11. Petitioner asserts that adhering to the strict terms and requirements of the statute and the above mentioned rule, given Petitioner's specific circumstances, would thus violate the principles of fairness and justice thereby causing substantial and undue hardship to the Petitioner – which is clearly not the purpose or legislative intent of the above-mentioned statute.
12. Thus, Petitioner proposes that given Petitioner's specific facts and circumstances, that Petitioner be allowed to waive the one year work requirement and be grandfathered into the old rule.
13. Petitioner further asserts that the true intent or purpose of the Statute and rule would still be achieved, should Petitioner be allowed to waive said requirement or be issued a variance.

STATEMENT OF FACTS**DEMONSTRATING A VIOLATION OF PRINCIPLES OF FAIRNESS JUSTIFYING WAIVER
OR VARIANCE**

14. Petitioner realleges paragraphs one (1) through thirteen (13) above.
15. Petitioner, DUROSEAU, is currently employed by the Quality Group, Payroll Processing and Personnel, LLC., (hereinafter "Quality Group") a firm which provides services including accounting, finance, payroll, human resources, billing & collections, to eight nursing facilities and assisted living facilities.
16. Petitioner, DUROSEAU, has been so employed with said firm for over eight (8) years.
17. Petitioner, DUROSEAU's, duties and responsibilities at the Quality Group for the past eight (8) years, range from examining and verifying financial documents and reports, to conducting payroll, accounts payable, and include analyzing ledger balance sheet accounts, reviewing and analyzing financial statements, Auditing Medicare and Medicaid accounts, managing operating aspects of over twenty-five (25) bank accounts, controlling cash management, internal control and auditing workman compensation.

Petitioner DUROSEAU has managed and implemented new accounting software systems for payroll, time & attendance and medical accounts receivables. Furthermore, Petitioner DUROSEAU has conducted payroll tax filings, developed, implemented and maintained policies and procedures that govern the accounting functions of the Quality Group, LLC., and has supervised and trained personnel in accounting, payroll and financial systems including ledgers, accounts payable, budgets, financials and cost reports.

18. Ms Margaret Hutson Fernandez, CFO of Quality Group, Ms. K. C. Cross, President & CEO of The Quality Group and Mary Anne Wood, Director of Human Resources with Quality Group can all attest to Petitioner's work experience and work ethic in the company. (See exhibits A, B, and C – respectively)
19. Petitioner DUROSEAU completed the requirements of Florida Statute §473.308(3), education requirement prior to December 31, 2008, by completing her bachelor's degree and 150 semester hours of college education prior to December 31, 2008.
20. Petitioner DUROSEAU completed said education requirement prior to sitting for the Certified Public Accountant examination.
21. Petitioner DUROSEAU successfully completed and passed three (3) out of four (4) sections of the Certified Public Accountant, ("CPA") examination prior to June 30, 2010.
22. Petitioner DUROSEAU successfully completed and passed the fourth (4) section of the CPA examination in August 2010 – two months after Florida Statute § 473.308(4) and Rule 61H1-27.0041 of FAC, "One year work Requirement" came into effect.
23. Though Petitioner DUROSEAU has met all of the education requirements, passed all sections of the CPA exam and worked in the accounting industry, in the capacity of an accountant for the past eight (8) years, Petitioner, through no fault of her own, is unable to meet the strict requirement of the statute which requires that Petitioner obtain Certification of Work Experience through a direct supervisor who must also be a licensed certified public accountant in good standing with any regulating body or a chartered accountant.
24. Unfortunately, Petitioner has recently learned that her direct supervisor for the past eight years and CFO of Quality Group, who was at one time a licensed Florida CPA, is no longer such, as Petitioner's direct Supervisor's license has been and is currently in an inactive status. (see Exhibit "H")

25. It should be noted however, that the Quality Group, Payroll Processing and Personnel has contracted the services of two CPA firms, Rhonda L. Hinds & Associates, CPA, PA and Stanley W Swindling of Moore Stephens Lovelace, P.A., Certified Public Accountants; Both of whom are Certified Public Accountants in good standing. (see Exhibits "I" & "J" – respectively)
26. Said contractors have worked with Petitioner DUROSEAU for the past two years on certain projects including payroll tax returns, compilation of Medicare and Medicaid cost reports, settlement of audits performed by Florida Agency for Healthcare Administration, preparation of schedules and documents for use and review of financial statements.
27. Said independent contractors, Rhonda L. Hinds & Stanley Swindling of Moore Stephens Lovelace, P.A., can attest to Petitioner's work ethic, and work experience for the past two years, with respect to these specific responsibilities and projects. (See exhibits D & E – respectively)
28. No other individuals who are also CPAs have directly supervised Petitioner during these past eight years.
29. Furthermore, Petitioner is able to prove her work experience in the accounting industry for the past eight years through performance appraisals from July 2006 and March 2010 (see exhibits F & G – respectively).
30. To require Petitioner to strictly demonstrate her work experience only through her direct supervisor would cause a substantial hardship to Petitioner.
31. Specifically, Petitioner would have to leave her position in her current place of employment where she has worked for eight (8) years and obtained tenure, longevity and accounting experience as well as her desired financial goal and financial stability and be forced to seek employment elsewhere where she would have to work for one year directly under a supervisor whose license is not in inactive status.
32. The current state of the economy and job market in Florida is not one which would allow Petitioner to easily find other comparable employment in order to fulfill the strict requirements of the above mentioned statute and rule.
33. If Petitioner is forced to leave her current position to obtain other employment to fulfill the strict requirements of statute, such requirement would place undue burden, substantial and financial hardship on Petitioner as well as Petitioner's family.

34. In attempting to satisfy this strict requirement, Petitioner would in turn, lose her seniority in her current position, as well as the current benefits for which she has worked tirelessly to obtain in her current position.
35. Furthermore, forcing Petitioner out of her current position would affect her financial status, as well as the livelihood of Petitioner and her family, as Petitioner is the main provider and breadwinner in her family
36. Other negative effects of forcing Petitioner to obtain new employment in order to satisfy this strict requirement include the possibility of being terminated from a new position, should this new company undergo financial hardship and be forced to terminate employment of their last hires.
37. Surely forcing Petitioner to obtain new employment in order to satisfy this new requirement violates the true principles of fairness.
38. Clearly Petitioner's current circumstances justify a waiver or variance from the above mentioned rule
39. Petitioner would otherwise be in a position to strictly adhere to and satisfy the strict requirements of the rule, but for her direct supervisor allowing her CPA license to lapse or become inactive.
40. In addition, a permanent waiver or variance for Petitioner's particular facts and circumstances would still serve the purposes of the underlying statute.
41. Whether the legislative intent of the one year work experience requirement is to ensure that applicants have sufficient experience to render services as CPA's or raise the bar from an ethical standpoint, or ensure that applicants have sufficient experience to adequately provide assurance on financial statements, or to enhance the quality of services provided by CPAs, said purpose would still be served should Petitioner be allowed to waive said requirement or be issued a variance.
42. In actuality, given the Petitioner's work experience, length of employment in her current place of employment, Petitioner has more than fulfilled the requirements of the above mentioned Statute and Rule.
43. Clearly Petitioner's work experience, duties and responsibilities for the past eight years in her current position demonstrate that she has well satisfied the true intent and purpose of the one year work experience requirement.

- 44 Surely the legislative intent of the statute is not meant to penalize those applicants who would otherwise satisfy the requirements of the above mentioned statute, but for their direct supervisor's CPA license status.
45. Hence to deny Petitioner's request to waive said requirement where Petitioner, through no fault of her own, is unable to show a signed Certification of Work Experience from her direct supervisor who has allowed her CPA license to lapse or become inactive, surely would violate the principles of fairness thus justifying a waiver or variance in the Petitioner's case to avoid substantial and undue hardship to Petitioner.

WHEREFORE, Petitioner respectfully requests that the Florida Board of Accountancy issue a permanent waiver or variance from Rule 61H1-27.0041, and/or any further relief as is deemed appropriate, just and fair.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. mail to: The clerk of the Agency, The Florida Board of Accountancy, Attn: Examination Specialist, at 240 NW 76th Drive, Suite A, Gainesville, Florida 32607; facsimile (352)333-2508 and the Joint Administrative Procedures Committee, Room 120, Holland Building, Tallahassee, Florida 32399, on this 10th day of December 2010.

LAURISTON & SMART, LLC
Attorneys for Petitioner
1424 South Andrews Avenue, Suite 100
Fort Lauderdale, Florida 33316
Telephone: (954) 745-8051
Facsimile: (954) 745-8053

By: 
Cynthia Lauriston, Esq.
Fla. Bar No.: 26366