

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
BRENT LOWMAN**

FILED	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	1/17/2012
File #	2012-00282

ORDER **VW 2011-291**

Petitioner, Brent Lowman, filed a petition for a permanent variance from Rules 61H1-27.002(2)(a), and 61H1-27.0041(2) Florida Administrative Code (FAC), on July 11, 2011. The notice of the petition appeared in the Florida Administrative Weekly on September 16, 2011, in Volume 37 Number 37; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy held on October 7, 2011, in Tampa, Florida. At the hearing on this matter, Petitioner was present and 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) pursuant to Section 473.308(7)(b)1.b, Florida Statutes (FS) and endorsement of his 2009 South Carolina license. Petitioner's application was received on April 27, 2010, and an initial review revealed he was deficient one semester hour in upper division accounting and one year of work experience.
2. Petitioner holds a degree from the University of Florida in accounting, awarded December 18, 2007, and one in law from the Florida State University College of Law, awarded April 30, 2011.

3. Rule 61H1-27.002(2)(a), FAC, provides in part that "an applicant must have at least 150 semester hours or 200 quarter hours of college education, including a baccalaureate degree or higher conferred by an accredited college or university with a major in accounting, or its equivalent." The rule goes on to identify specific upper division postgraduate courses the applicant must complete prior to licensure.

4. Section 473.308(4), FS, provides that an applicant for licensure must show one year of work experience (applicants who applied before January 1, 2009, and passed the examination on or before June 30, 2010, would have been exempt from this requirement).

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." [Emphasis added.]

6. Petitioner passed the final section of the CPA examination on April 13, 2009, in South Carolina, where the educational requirements to be eligible to take the examination are different. While Petitioner has documented approximately one year of experience under the supervision of a licensed CPA, roughly half of it was completed prior to his having completed the additional education that he would have needed to be eligible to sit for the examination in Florida.

7. Petitioner seeks a permanent variance from Rule 61H1-27.002(2)(a), FAC, to the extent necessary for the Board to find his education (including that achieved through his law degree) in compliance with Section 473.308(3), FS. Petitioner also

seeks a permanent variance from Rule 61H1-27.0041(2), FAC, to the extent necessary for the Board to find that the supervised experience he completed prior to meeting Florida education requirements for CPA licensure be used to help him satisfy 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:

8. Petitioner established that the purpose of the underlying statute, Section 473.308(3), FS, would be met were he to be granted a variance from Rule 61H1-27.002(2)(a), FAC.

9. Petitioner established that the purpose of the underlying statute, Section 473.308(4)(a), FS, would be met were he to be granted a variance from the Rule 61H1-27.0041(2), FAC, in that he has completed the required amount of experience under the supervision of a licensed CPA.

10. Petitioner further established that the Board's application of Rules 61H1-27.002(2)(a), and 61H1-27.0041(2), FAC, to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

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 9th day of January, 2012, 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 Brent Lowman, 810-1 St. Michael Street, Tallahassee, FL 32301; and to Jesslyn Krouskroup, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 17th day of January, 2011 6pm 2012



Brandon M. Nichols

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/11/2011
File #	

Petition for Variance from Rule 61H1-27.0041(2) and Waiver from Rule 28.0052 (2) and Waiver from Rule 61H1-27.002

Petitioner Information:

Brent Matthew Lowman
13201 Old Crystal River Rd.
Brooksville, FL 34601
Ph: (352) 428-4430

Attorney Information:

Not Applicable

Applicable portions of Law

RECEIVED
JUL 11 2011
BOARD OF ACCOUNTANCY

VW 2011-291

61H1-28.0052 Number of Sitzings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

(2) A candidate shall be deemed to have passed the CPA Examination when the candidate has been granted credit for all sections of the CPA Examination. Upon certification of examination scores by the Board to the Department that the applicant has met all licensure requirements as imposed by Chapters 455 and 473, F.S., and the rules promulgated pursuant thereto, the Department shall issue a license to practice public accounting to such individual. However, in no event shall an initial license be issued if the initial licensure fees and all required documents are not received within 36 months of the date of certification of examination scores by the Board; in such case, the certification expires and the applicant may reapply for licensure by endorsement, pursuant to Section 473.308(7)(a), F.S.

61H1-27.0041 One Year of Work Experience.

(2) 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. The 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. Reasonable vacation time and sick leave or other required absences may be permitted. The supervisor, in her or his report to the Department, shall certify that the applicant rendered such services as are customarily performed by full-time, regularly employed staff employees for a minimum of 2,000 hours gained over a period of not less than fifty-two (52) or more than one hundred and four (104) weeks. The sequence of the experience is considered immaterial, that is, whether the experience was secured before or after taking the examination, or partly before the examination and partly after the examination, provided the two periods combined equal at least one year.

07/08/2011 15:03

Received:
8506447284

Jul 8 2011 03:45pm

PAGE 02

61H1-27.002 Concentrations in Accounting and Business.

(b) 24 semester or 36 quarter hours in general business education which shall include not less than the equivalent of 6 semester or 8 quarter hours in business law courses which shall include coverage of the uniform commercial code, contracts and torts.

61H1-27.002 Concentrations in Accounting and Business.

(a) 36 semester or 54 quarter hours in accounting education at the upper division level which shall include coverage of auditing, cost and managerial accounting, financial accounting, accounting information systems, and taxation. Not more than 3 semester or 4 quarter hours may be internship programs which may be applied to the 36 semester or 54 quarter hours in accounting (internship courses must be taken in conjunction with other traditional coursework at an institution and must appear on the transcript). Further, any remaining internship credit if otherwise acceptable would be applied to the general business requirement, and

The statute the rule is implementing:

Section 473.308, F.S.

Type of Action Requested:

The petitioner request that the Board of Accountancy please grants a Variance from Rule 61H1-27.0041(2) and Waiver from Rule 61H1-28.0052 (2) and Waiver from Rule 61H1-27.002.

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

Application of the rule that requires 6 credit hours in business law to be able to sit for the examination and begin accruing the required work experience doesn't fit the designed curriculum for an accounting degree. A completed bachelor's degree, such as the one I earned at the University of Florida, only requires 3 semester hours of business law leaving 3 short of the required amount. Upon graduation in December of 2007, I immediately began a 3-month accounting internship believing that this experience would give credit while I studied for the CPA exam. After completing several of the sections, I began law school in August of 2008. There I immediately took classes that would have been sufficient to fulfill the remaining 3 hours of business law courses. Included were Contracts I and II, Wills and Estates, Corporations, Torts I and II, Business Associations, and other classes that I believe fully serve the purpose of the statute and denying 3 months of work experience because of the lack of 3 business law hours would serve as a substantial hardship given my situation that will be explained later. I took substantial tax and business classes before graduating from the Florida State University School of Law in May of 2011.

Application of the rule that requires a licensure or expiration of exam credit within 36 months of certification is too harsh of a rule when strictly applied to every applicant without any consideration of other circumstances. After passing of the CPA exam, I decided I would serve my country and was commissioned as a Second Lieutenant in the United States

Marine Corps in 2010, and thus the underlying issue for my hardship and request for variance. I will receive orders at an undetermined time to report back to service where I will serve for the next 3 ½ years as an officer in the Marine Corps. It is obvious that I will not be able to work under a CPA in an accounting capacity as required under section 61H1-27.0041(2) within 36 months of my completion of the CPA exam on August 13, 2009. I have been working part time for the previous 6 months and if given a waiver for the previous issue will have a total of 6 months work experience. I immediately plan entering the accounting profession full time in August and hope to complete the remaining 6 months needed before I receive orders. I am requesting this variance that in the case that I am called back into the service before I complete my one year's work experience I will not lose all exam and experience credit for not receiving my license within 36 months. I hope that I will complete all requirements and receive my license before I am called back to duty but would like to receive a waiver to ensure that in the situation that I don't, I may finish the few remaining months of work experience on completion of my military service.

The final reason is that it appears I am 1 credit hour short in accounting concentration to receive a license. As I am moving to Tampa to work as an accountant, it would be a substantial hardship to apply to a new school, expensive to pay for 1 credit of tuition, and time consuming. I feel as though my 3 years of law school and accounting internships that were conducted before I could begin to acquire time for the 1 year of work experience has been sufficient to give me the academic background to allow for a 1 credit hour leeway.

The reason why the waiver would serve the purposes of the underlying statute:

The requirement that certain educational requirements must be met before the commencing of work experience is to ensure that applicants have a background in accounting and that the work experience provides valuable knowledge and training to supplement ones education. The lack of one business law class when all other requirements were met does not raise any substantial issue that the 3 months of internship for a major accounting firm was any less beneficial that it would have been had I completed the one remaining class.

Also, with my service as an officer in the United States Marine Corps, the 36-month window places undue hardship on my particular circumstances when taken as a whole and a waiver of such requirement would be justifiable and in congruence with the purpose in the underlying themes of the Servicemembers Civil Relief Act. Most specifically in the provisions stopping the toll of statute of limitations under Section 526.

My dedication to both my academic career and my commitment to my country both serve to show my strong values and my hopes to become a CPA in the future. Please also consider the fact these work requirements went into effect mere months before my application for licensure was made as I graduated in December of 2007. Had I applied just a few months earlier, these rules would not have even applied to me. It may appear on the face of this request that I am asking for many variances that go against the purpose of these regulations, but when taken as a whole and in its entirety, I believe that I have completed the purpose of the rules and will be a valuable addition to the accounting profession in Florida. As I understand that I am a unique and complicated applicant, I would request if needed an in person hearing in front of the board to clear up any issues or questions in regards to this petition.

Fax:

Aug 31 2011 04:56pm P006/006

07/08/2011 15:03

Received:
8586447284

Jul 8 2011 03:46pm

PAGE 84

Petitioner Statement:

The petitioner seeks a variance from Rule 61H1-27.0041(2) and a waiver or temporary waiver from rule 61H1-28.0052 (2) and a waiver from rule 61H1-27.002.



Dated this 6th day of July, 2011.