

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
AARON SHMALO**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/13/2012
File #	2012-07249

ORDER GRANTING PETITION

Petitioner, Aaron Shmalo, filed a petition for a permanent variance from the requirements of Rule 61H1-28.0052(1)(b), Florida Administrative Code, on August 23, 2012. The notice of the petition appeared in the Florida Administrative Weekly on September 7, 2012, in Volume 38 Number 36; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on September 28, 2012, 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

VW 2012-279

The facts relevant to the petition are as follows:

1. Petitioner is an applicant for licensure as a certified public accountant (CPA).
2. Rule 61H1-28.0052(1)(b), FAC, provides in 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."
3. Petitioner passed the REG portion of the CPA examination on September 23, 2010, and credit for that portion of the examination expired on February 29, 2012. Petitioner passed the FAR portion of the examination on March 23, 2011, and credit for that portion of the examination expired on August 31, 2012. Petitioner passed the BEC portion of the examination on February 23, 2012, and credit for that portion of the

examination expires on July 31, 2013. Petitioner passed the AUD portion of the CPA examination on May 23, 2012, and credit for that portion of the examination expires on October 31, 2013.

4. In May, 2011, NASBA notified examination candidates of changes to its examination grade release schedule that caused Petitioner to be uncertain of the beginning and end of his rolling eighteen-month period.

5. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow him an extension of time of two months beyond the eighteen months provided in rule to retain the passing score on the REG portion of the examination.

GROUND FOR APPROVAL

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

6. 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.

7. 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 6th day of November, 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), 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 to Aaron Shmalo, 20 West Sunrise Ave., Coral Gables, Florida 33133, 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 13th day of November, 2012.


Brandon M. Nichols

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2012 8 27
BOARD OF ACCOUNTANCY

"Amended"

PETITION FOR VARIANCE FROM RULE 61H1-28.0052(1)(b)
18 Month Rule

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/27/2012
File #	

Aaron Shmalo
20 West Sunrise Ave.
Coral Gables, FL 33133
305-546-8268

Attorney Information:

Not Applicable

VW 2012-279

Applicable portions of the rules:

61H1-28.0052(1)(b) Number of Sittings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

Candidate 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. In the event all four test sections of the CPA Examination are not passed within the rolling 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 61H1-28.0052(1)(b), FAC stated above due to the following circumstances.

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

The petitioner has been working in public accounting for 2 ¼ years and concurrently sat for the CPA Examination as an applicant in the State of Georgia. He has passed all 4 portions of the exam, however, not within a rolling eighteen-month period (refer to table below). While sitting for the exam, additional course materials were added and resulted in score notification delays by NASBA (please see attached). The delayed process caused the petitioner difficulty in determining whether to wait for exam results or begin studying for a different section. The petitioner was unable to focus on a specific exam section until he passed.

As a result of the score notification delay, the State of Georgia will not transfer the petitioner's REG exam score which has expired. The petitioner is applying for Licensure by Endorsement in the State of Florida and requesting that the Florida Board of Accountancy grant an extension for the expired score and accept his application to be a CPA in the State of Florida.

EXAM	NTS Section ID #	Exam Date	Notification Date	Expiration Date	Score
REG	4156157	08/31/2010	09/23/2010	02/29/2012	82
FAR	4446069	02/28/2011	03/23/2011	08/31/2012	76
BEC	4726935	01/29/2012	02/23/2012	07/31/2013	80
AUD	4794612	04/28/2012	05/23/2012	10/31/2013	90

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

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

Petitioner statement:

The petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b)

RECEIVED

8/23/12
BOARD OF ACCOUNTANCY
Petitioner Information

**PETITION FOR VARIANCE FROM RULE 61H1-28.0052(1)(b)
18 Month Rule**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/23/2012
File #	

Aaron Shrnalo
20 West Sunrise Ave.
Coral Gables, FL 33133
305-546-8268

VW 2012-279

Attorney Information:

Not Applicable

Applicable portions of the rules:

61H1-28.0052(1)(b) Number of Sittings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules.

Candidate 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. In the event all four test sections of the CPA Examination are not passed within the rolling 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 61H1-28.0052(1)(b), FAC stated above due to the following circumstances.

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

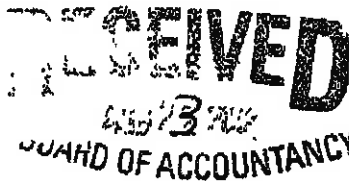
The petitioner has been working in public accounting for 2 ½ years and concurrently sat for the CPA Examination. He has passed all 4 portions of the exam, however, not within a rolling eighteen-month period. He has demonstrated passing all 4 portions in approximately twenty-one months.

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

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

Petitioner statement:

The petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b)



**PETITION FOR VARIANCE FROM RULE 61H1-28.0061
Examination Credit from Other States**

Petitioner Information:

Aaron Shmale
20 West Sunrise Ave.
Coral Gables, FL 33138
305-546-8258

Attorney Information:

Not Applicable

Applicable portions of the rules:

61H1-28.0061 Examination Credit from Other States.

Upon application, an individual who has been granted credit by another state for any section on the CPA Examination, the specific examination for which sections were identical to those offered in Florida, shall receive Florida credit for such out-of-state credit provided similar credit would have been granted in Florida at the time out-of-state credit was granted had the candidate met all the Florida requirements and sat for such examinations in Florida. For purposes of this rule in determining whether to transfer examination credit from another state, the Board shall consider and hold binding the examination requirements in effect in Florida at the time the individual received out-of-state credit. An individual so receiving Florida credit shall be deemed to have been a Florida candidate for such purpose in determining future sittings and credit granting for the remaining section(s). Any person desiring to receive credit under this rule shall file an application with the Department and be certified as eligible to the Department by the Board.

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 61H1-28.0061, FAC stated above due to the following circumstances.

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

The petitioner had applied to sit for the CPA Examination in Georgia and has passed all 4 portions. He has met all examination requirements in effect in Florida while testing in Georgia except for the rolling eighteen-month period requirement. He passed required CPA exam in a twenty-one month period.

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

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

Petitioner statement:

The petitioner seeks a permanent variance from Rule 61H1-28.0061