

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
BRIAN MAISEL-BORISMAN**

VW 2019-026

NOTICE OF INTENT TO DENY PETITION

Petitioner, Brian Maisel-Borisman, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on February 14, 2019. The Notice of the petition appeared in the Florida Administrative Register on February 25, 2019, in Volume 45 Number 38. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on March 22, 2019, in Gainesville, Florida. Petitioner was present for the proceeding. The Board was represented by Rachelle Munson, Assistant Attorney General. The Petition is incorporated by reference herein and attached to this notice.

STATEMENT OF RELEVANT FACTS

The facts relevant to the petition are as follows:

1. **Rule 61H1-28.0052(1)(b), F.A.C.**, 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 23, 2015, and credit for that portion of the examination expired on August 23, 2016. Petitioner passed the BEC portion of the examination on June 7, 2016, and credit for that portion of the examination expired on December 7, 2017. Petitioner passed the AUD portion of the examination on June 25, 2018, and credit for that portion of the examination will expire on

December 25, 2019. Petitioner passed the FAR 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 due to a learning disability, he passed two (2) sections of the examination, REG and BEC, outside of the 18-month window. Petitioner acknowledged that he received accommodations that included double time and a separate testing room during the examinations; however, he asserts was only able to take one (1) part in each test window which created hardships for passing the examinations in the time frame pursuant to the rule. Petitioner also noted that score release delays, the death of his grandfather in 2015, and serving as a caregiver to his grandmother caused additional hardship for him. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), F.A.C.

4. Petitioner is twenty-two (22) months and two (2) days outside the eighteen-month window for the AUD portion of the examination and twenty-seven (27) months and twenty-six (26) days outside the eighteen (18) month window for the FAR portion of the examination.

GROUND FOR DENIAL

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

5. Petitioner failed to establish that the Board's full application of Rule 61H1-28.0052(1)(b), F.A.C. to his circumstances, including an examination passage window exceeding twenty-seven (27) months, would violate principles of fairness and would impose a substantial hardship on him.

6. Petitioner failed to establish that, if he was granted the variance, the purpose of

the accountancy examination statute would be met as required by Section 473.306, F.S.

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

DONE AND ORDERED this 16th day of April, 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: **Brian Borisman-Maisel**, 9944 S. Abiaca Circle, Davie, Florida 33328, 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 19th day of April, 2019.

Brandon M. Nichols

PETITION FOR VARIANCE OF BOARD OF ACCOUNTANCY RULE

Petitioner Information:

Brian Seth Borisman-Maisel
9944 S Abiaca Circle
Davie, Florida 33328

Attorney Information:

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RECEIVED
FEB 14 2019

**DIVISION OF CERTIFIED
PUBLIC ACCOUNTING**

VW 2019-026

Applicable Portions of the Rule:

To waive the rolling eighteen month period required by Rule 61H1-28.0052(1)(b), Florida Administrative Code, which states : candidates must pass all four 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 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.

Type of Action Requested:

Petitioning for a one-time variance of Rule 61H1-28.0052(1)(b), based on the Florida Statute, Section 120.542, and Rule 28-104.002 for the sections of *Regulation* and *Business Environments and Concepts* not passed in the allotted time.

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

It is with great pride and joy that I have passed all four sections of the Certified Public Accountant (CPA) test as of December 19, 2018. I am requesting your review of the history of my test taking results. Unfortunately, due to my previously documented learning disability which you have on record, two of the sections' credits, *Regulation* and *Business Environments and Concepts*, were passed beyond the eighteen-month window. The credit for *Regulation* was received on February 24, 2015, and the credit for *Business Environment and Concepts* was received on June 8, 2016. I respectfully request the Board of Accountancy to re-evaluate the credit expiration date, based on my documented learning disability, which clarifies why the time frame for passing should not be a deterrent in my final acquisition of my certifications.

I had been given accommodations during my CPA exam that included double time and a separate room. Due to my disability, I was only able to take one part in each test window which caused hardship in passing the exams in the time frame allocated. Due to my learning disability, I had to sit for a specific section multiple times until I would pass the section. During the time I

was taking some of these exams, the CPA exam was changing, and scoring the test took an extended period-of-time to score and receive credit. (see letter attached by Psychologist)

Also note that during the time I was sitting for the CPA exam, in June of 2015, my grandfather passed away. This provided additional hardship above and beyond my Learning Disability as I was my grandmothers caregiver. Please find attached his death certificate showing the specific date of my grandfather's passing. (I have attached)

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

I respectfully request the Board of Accountancy to please review my attached letter from the psychologist that documents my learning disability, test history, test accommodations, and the passing of my grandfather, so that you can award me the exam requirements of the CPA by extending the two credits for *Regulation* and *Business Environments and Concepts*. Although these exams were passed outside the allotted eighteen-month window, prior to December 19, 2018, I am hoping you will recognize my success and demonstration of my knowledge in my field. I love working as an account and am devoted to my job, and have adapted self-accommodations to support myself in my career to the point where I am at this time.

Petitioner Statement:

I would be grateful to you for extending me this one-time variance based on your evaluation of the fairness regarding this matter.

Thank you in advance for your time and consideration.

Regards,

Brian S. Borisman -Maisel
Application Number: 195464
Jurisdiction: 00687446