

**STATE OF FLORIDA
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY
JASON BURKHARDT**

VW 2021-113

NOTICE OF INTENT TO GRANT PETITION

Petitioner, Jason Burkhardt, filed a petition for a permanent variance from the requirements of **Rule 61H1-28.0052(1)(b), Florida Administrative Code (F.A.C.)**, on July 12, 2021. The Notice of the petition appeared in the Florida Administrative Register on July 26, 2021, in Volume 47 Number 143. No comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Florida Board of Accountancy (“Board”) on September 24, 2021, via telephone and video conference. Petitioner was present and was not represented by counsel. 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 May 24, 2021, and credit for that portion of the examination will expire on November 24, 2022. Petitioner passed the FAR portion of the examination on March 7, 2019, and credit for that portion of the examination expired on June 30, 2021. Petitioner passed the BEC portion of the examination on September 10, 2018, and credit for that portion of the examination expired on March 10, 2020. Petitioner passed the AUD portion of the CPA examination on December 12, 2018, and credit for that portion of the examination expired on June 30, 2021

3. Petitioner attributes testing center closures due to COVID-19, hospitalizations and health issues, and work hours and work-related travel as circumstances that negatively impacted his ability to timely pass the sections of the CPA examination.

4. Rule 61H1-28.0052(3), F.A.C., states: “The eighteen-month requirement as stated in this rule does not apply to examination credits expiring between April 1, 2020 and June 29, 2021. Those credits shall be granted an extension through June 30, 2021.”

5. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow an extension of the eighteen months required by the rule to pass all sections of the examination.

GROUND FOR APPROVAL

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


6. Petitioner's BEC passage date was twenty-one (21) days prior to the April 1, 2020 extension date which, pursuant to Board Rule 61H1-28.0052(3), also provided an expiration date of June 30, 2021 for eligible exam scores. The Board relied to a greater extent on the Petitioner's proximity for eligibility regarding the extension provision in Rule 61H1-28.0052(3) than the Petitioner's explanation regarding self-defined work-related hardships.

7. Petitioner established that the Board's strict application of Rule 61H1-28.0052(1)(b), F.A.C., to his circumstances, would violate principles of fairness or would impose a substantial hardship on him. If provided the benefit of the extension rule, this petition would not have been necessary.

8. 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, F.S.

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

DONE AND ORDERED this 11 day of October, 2021, by the
Florida Board of Accountancy.


Roger Scarborough, Division Director
Division of Certified Public Accounting

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 **Jason Burkhardt**, 677 SW Wood Creek Drive, Palm City, Florida 34990; 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; and **Cassandra Fullove** at Cassandra.Fullove@myfloridalegal.com this 25th day of October, 2021.


Brandon M. Nichols

FILED	
<small>Department of Business and Professional Regulation</small>	
<small>Senior Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	7/12/2021
File #	

RECEIVED

JUL 12 2021

Florida Division of
Certified Public Accounting

VW 2021-113

Petitioner Information:

Jason Burkhardt
677 SW Wood Creek Drive
Palm City, Florida, 34990

Applicable Portion of the Rule: To waive the rolling eighteen-month period #61H1-28.0052 (1) (b) - 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. 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.

Citation to the Statute: 120.542 - "Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule".

I started my CPA Journey in Fall of 2017 and passed my first test (BEC- the one I am petitioning) in September of 2018. 2018 was a difficult year for me as I was traveling every week to California for work as I was part of an ERP Implementation team. I worked 8-10 hours on the implementation, then worked on my daily job functions in addition to studying for the CPA. This eventually led to my hospitalization due to pure exhaustion and health issues. I was scheduled to take the FAR on 12.8.18 but was unable to take it due to illness (Please see DR note attached). I then passed FAR and Auditing early 2019. I took REG a total of 7 times between then and when I finally passed in May of 2021. I was determined to pass the REG exam and never gave up. During this time, I would schedule an exam time and study to get ready, but the testing center would close because of Covid. This happened a few times. During this time, I also suffered a severe leg injury where I was excused for 3 months per doctors note (attached). Still, I was determined and never gave up. Now I have lost credit for my FAR and AUD due since they expired on 6.30.21 from Covid extensions and I am back to square one.

Action Requested for Board to Take: - Accept all 4 passing grades

I am requesting to extend my BEC credit that expired 3.12.20 to 4.1.2021 which is when the Covid extensions started due to unforeseen circumstances (injuries) so I would get credit for all 4 parts.

Specific Fact that Demonstrates a Violation of the Principles of

Fairness: "Determination". Fairness comes into play when someone demonstrates that no

matter comes at them during such a length of time, they push forward through the ups and downs of daily life and never give up.

Reason Why Waiver Would serve the purpose of the underlying statute:

Petitioner has been so dedicated to this test for 4 years and worked through all the setbacks while working full time. I have also been trying to contact and send all information for months and it took a long time to get a response, however, never gave up on that either. The purpose of granting my waiver request would mean years of fortitude does mean something and my knowledge will remain with me as I move forward in my career and future studies.

Petitioner Statement: Petitioner is seeking a permanent waiver from the rule #61H1-28.0052 (1) (b) to waive the rolling eighteen month and accept the 4 test scores with the limitations that have had to deal with.

Thank you for your consideration,

Jason Burkhardt