

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE BOARD OF PUBLIC ACCOUNTANCY**

IN THE MATTER OF: )  
 )  
JOSEPH S. KOFORD ) OAH No. 08-0159-CPA  
 ) Agency No. 0603-08-001  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

Joseph S. Koford appealed the denial of his application for licensure as a Certified Public Accountant (“CPA”) by the Alaska Board of Public Accountancy (“board”). This appeal presents two issues: whether Mr. Koford is entitled to appeal despite missing the appeal deadline and, if so, whether his work history constitutes attest experience as required by the board’s statutes and regulations.

The formal hearing was held on June 3, 2008. Mr. Koford represented himself; Assistant Attorney General Gayle A. Horetski represented the Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing (“division”). The record consists of the hearing testimony of two witnesses<sup>1</sup> and the documentary record submitted by the division.<sup>2</sup> Mr. Koford did not offer additional exhibits.

Because he is appealing the board’s denial of his application for licensure, Mr. Koford has the burden of proving by a preponderance of the evidence that he meets the minimum requirements for a CPA license.<sup>3</sup> This means that Mr. Koford needs to put evidence in the record or point to evidence already in the record showing that he is entitled to a hearing and that he has the experience required for a license.

Mr. Koford did not meet his burden of proving that he meets the minimum requirements for licensure. Accordingly, his June 11, 2007, application for a CPA license is denied.

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<sup>1</sup> Mr. Koford testified on his behalf; Licensing Examiner Veida Forrest testified for the division.

<sup>2</sup> The division’s record consists of Exhibits A-D, filed on April 30, 2008. On June 2, 2008, the division supplemented Exhibit B and added Exhibit E to the record.

<sup>3</sup> The requirements of the Administrative Procedure Act apply to this proceeding. AS 44.62.330(a)(9). Pursuant to AS 44.62.460(e)(2), "the respondent has the burden of proof by a preponderance of the evidence if a right, authority,

## II. Facts

Mr. Koford works for the Internal Revenue Service (“IRS”) as a Computer Specialist.<sup>4</sup> Previously he was employed by the IRS in a different capacity: from February 1980 through October 1994, Mr. Koford was an IRS Tax Auditor in California and Texas.<sup>5</sup> From October 1994 through April 1998, he worked as an IRS Revenue Agent, also in Texas.<sup>6</sup> Mr. Koford’s IRS supervisor during that period of time was a CPA named Stephanie Baldwin.<sup>7</sup>

Mr. Koford submitted his application for a CPA license in Alaska on June 11, 2007.<sup>8</sup> After all of his education and testing verifications were received<sup>9</sup> the board considered his application at its meeting on November 8-9, 2007.<sup>10</sup> According to Veida Forrest, a division licensing examiner, the board could not determine from Mr. Koford’s application whether he met the requirements for licensure, so it requested that he provide additional information regarding his audit experience working under Ms. Baldwin’s supervision. Specifically, in a November 23, 2007, letter to Mr. Koford from Ms. Forrest, the board requested “work papers or other documentation to substantiate the professional experience claimed.”<sup>11</sup>

On December 10, 2007, Mr. Koford submitted a letter to Ms. Forrest that explained he could not provide work papers to substantiate his work experience because of IRS confidentiality rules,<sup>12</sup> but in the place of work papers he provided a copy of a job description for an Internal Revenue Agent.<sup>13</sup> In the letter Mr. Koford described his work as a Revenue Agent:

As a Revenue Agent I examined small businesses, mostly sole proprietorships, S Corps and some partnerships with gross receipts of less than \$5,000,000. I estimate that I examine (sic) 50 or so

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license, or privilege has been initially denied or not issued." To prove a fact by a preponderance of the evidence, Mr. Koford must show that the fact more likely than not is true.

<sup>4</sup> Exh. A at 2.

<sup>5</sup> Exh. A at 35.

<sup>6</sup> Exh. A at 33.

<sup>7</sup> Exh. A at 37.

<sup>8</sup> Exh. A at 24-56.

<sup>9</sup> On June 13, 2007, Ms. Baldwin, a CPA licensed in Texas, certified Mr. Koford’s accounting experience on a form provided by the division. *Exh. A at 33-34*. She indicated that he had sufficient experience in each work category, and that Mr. Koford had in excess of 15 engagements performing the attest function, resulting in 5,000 audit hours and 2,000 review hours. *Id.*

<sup>10</sup> Exh. A at 21.

<sup>11</sup> Exh. A at 21; Exh. C at 4.

<sup>12</sup> Exh. A at 15-16.

<sup>13</sup> Exh. A at 17-20.

business (sic). I also examined the occasional personal 1040 if the issues identified were beyond the scope of Office Audit.<sup>[14]</sup>

The board considered Mr. Koford's application for licensure again on January 10-11, 2008. After discussion, the board determined that Mr. Koford's audit experience as an IRS Revenue Agent did not qualify as "attest experience" under the requirements of AS 08.04.120, 12 AAC 04.180, 12 AAC 04.183, and 12 AAC 04.990(11).<sup>15</sup>

The division sent Mr. Koford notice of the board's decision on his license application on February 4, 2008, and he received it on February 7, 2008.<sup>16</sup> As required by AS 44.62.370 – 390, the notice letter informed Mr. Koford that he could contest the board's denial of his license application and request an administrative hearing, so long as his request for a hearing was submitted within 15 days of his receipt of the notice.<sup>17</sup>

On February 29, 2008, Mr. Koford signed a request for an administrative hearing and sent it to the division; it was postmarked and was thus considered received on March 1, 2008.<sup>18</sup> Mr. Koford's request was postmarked eight days after the end of the 15-day period for filing a request for hearing under AS 44.62.370 – 390.

When he received the letter from the division that informed him his application for licensure had been denied, Mr. Koford was still recovering from a serious medical condition which had caused him to be hospitalized for several days. He was administering shots to himself twice a day and he was prohibited from strenuous activity such as driving. He initially overlooked the 15-day deadline for filing an appeal. Moreover, when he did realize he only had 15 days within which to respond, he was unsure whether he had 15 calendar days or 15 business days to file an appeal. The division's letter did not specify whether the 15 day deadline was calendar days or business days.<sup>19</sup>

The division referred Mr. Koford's request for a hearing to the Office of Administrative Hearings ("OAH") without making a determination whether his appeal was disallowed because it was untimely.

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<sup>14</sup> Exh. A at 15.

<sup>15</sup> Exh. A at 4-6; Exh. D at 3.

<sup>16</sup> Exh. A at 3-4.

<sup>17</sup> Exh. A at 4.

<sup>18</sup> Exh. B at 5. Under 12 AAC 02.920(a) a document submitted to the division is considered filed as of the postmark date. The envelope shows a postmark date of March 1, 2008.

<sup>19</sup> Testimony of Mr. Koford; Exh. B at 6.

### **III. Discussion**

#### **A. Mr. Koford's appeal was untimely but he is entitled to an evidentiary hearing**

As set forth in AS 44.62.370, the division's February 4, 2008, letter of denial constitutes a "statement of issues," the issuance of which entitled Mr. Koford to request a hearing.<sup>20</sup> The statute gives the respondent 15 days to request the hearing.<sup>21</sup> It further provides that "[f]ailure to file the notice constitutes a waiver of the respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."<sup>22</sup>

Mr. Koford's position is that the agency has already exercised its discretion and allowed his late appeal because it referred his appeal and request for a formal hearing to the OAH.<sup>23</sup> The division's position is that it referred the decision on timeliness to the OAH along with Mr. Koford's appeal so the administrative law judge, not the division, should make the decision.<sup>24</sup>

The ultimate authority to grant or deny a hearing probably rests with the board, rather than the division or the OAH. The board did not, and was not required to, make a decision on the timeliness issue before its staff referred Mr. Koford's appeal to the OAH. The act of referring the appeal to the OAH was not a substantive decision on whether Mr. Koford's appeal could go forward. The division raised the issue early in the appeal process, and evidence has been taken so that the matter may be presented to the board with the decision.

The evidence in this case supports granting Mr. Koford the extra eight days to initiate his appeal. He has established that his delay was reasonably explainable by inattention due to poor health. The delay was short, and there is no evidence that it inconvenienced or otherwise prejudiced the division.

#### **B. Mr. Koford cannot prove he meets the minimum requirements for licensure**

The practice of public accounting in Alaska is governed by the Board of Public Accountancy. The controlling statutes appear at AS 08.04.005 – 08.04.690. The regulations adopted by the board to implement the statutes are found at 12 AAC 04.005 – 12 AAC 04.990.

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<sup>20</sup> AS 44.62.370. The requirements of the Administrative Procedure Act apply to this appeal. AS 44.62.330(a)(9).

<sup>21</sup> AS 44.62.390(a).

<sup>22</sup> AS 44.62.390(c).

<sup>23</sup> Koford Pre-hearing brief at 3.

<sup>24</sup> Division Pre-hearing brief at 3.

All of the applicable regulations were amended effective January 1, 2008.<sup>25</sup> Mr. Koford's application was originally received and considered before the effective date of the revisions to the regulations, so his license application was, and will be, considered under the former regulations in effect at the time his application was received. All references below are to the former regulations.

The statutes require that in addition to various educational and testing requirements, which Mr. Koford appears to have met and which are not at issue in this appeal,<sup>26</sup> an applicant for a CPA license in Alaska must have "two years of accounting experience satisfactory to the board."<sup>27</sup> This experience primarily involves the "attest" function, which is defined in the regulations governing public accounting as:

the ordinary examination of financial statements by a certified public accountant or public accountant, which results in a report which expresses the accountant's opinion or the disclaimer of an opinion on the fairness with which the financial statement presents financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles . . . .<sup>[28]</sup>

The regulations require that a CPA applicant's experience "must include a minimum of 500 hours of work performing the attest function under the direct supervision of a certified public accountant."<sup>29</sup> Of those 500 attest function hours, 400 hours must have been accrued performing the independent audit function."<sup>30</sup> The CPA regulations further require that the applicant's attest experience include:

- (1) application of a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records;
- (2) preparation of audit working papers covering the examination of the accounts usually found in accounting records;
- (3) planning of audit work;

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<sup>25</sup> Register 184.

<sup>26</sup> See Exh. A at 6.

<sup>27</sup> AS 08.04.120(a).

<sup>28</sup> 12 AAC 04.990(11) (2007).

<sup>29</sup> 12 AAC 04.183(a) (2007).

<sup>30</sup> 12 AAC 04.183(b) (2007).

(4) preparation of written explanations and comments on the findings of the examination and on the content of the accounting records; and

(5) analysis and preparation of audited or reviewed financial statements, including explanations and notes.<sup>[31]</sup>

Further, the applicant for a CPA license must document the attest function experience on a form provided by the division, giving a summary that: “(1) describes the type of each attest engagement; (2) identifies the number of each type of attest engagement; and (3) identifies the number of hours of participation in each type of attest engagement.” In the event the applicant does not adequately document his or her attest function experience, the board “may require an applicant to provide working papers or other documentation to substantiate the professional experience claimed.”<sup>32</sup>

Mr. Koford’s supervisor, Stephanie Baldwin, certified his work as attest experience, but she was verifying in 2007 work that Mr. Koford performed up to thirteen years earlier, from 1994 through 1998.<sup>33</sup> Her verification was made on a form where she simply checked all of the applicable boxes. Perhaps Ms. Baldwin could have testified more specifically about Mr. Koford’s work experience, but he did not call her as a witness at the hearing.

The board requested that Mr. Koford submit work papers to supplement his application, but all he provided was a copy of his Revenue Agent job description, a vague document that does not clearly establish Mr. Koford’s attest experience. The job description refers to auditing tasks and related functions, but the primary duties of this position are to analyze a taxpayer’s financial records to determine the correct amount of his or her tax obligation. This is a much different purpose than set forth in the definition of the attest function: “the ordinary examination of financial statements . . . which results in a report which expresses the accountant’s opinion or the disclaimer of an opinion on the fairness with which the financial statement presents financial position, results of operations, and changes in financial position . . . .”<sup>34</sup>

Mr. Koford argues that it should be possible for him to utilize a long-standing agreement between the board and the IRS that in the past has provided a mechanism for a CPA applicant/

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<sup>31</sup> 12 AAC 04.180(a) (2007).

<sup>32</sup> 12 AAC 04.183(e) (2007).

<sup>33</sup> See Exh. A at 33-34.

<sup>34</sup> 12 AAC 04.990(11) (2007).

IRS employee to verify his or her accounting experience.<sup>35</sup> That agreement, which he learned about from a CPA working for the IRS, was apparently first considered by the board in 1985.<sup>36</sup> The agreement established a committee of three CPA/ IRS employees who would be authorized to verify a CPA applicant's accounting experience at the IRS through the use of an extensive questionnaire and checklist documenting the applicant's work experience.<sup>37</sup> That way an IRS employee applying for a CPA license in Alaska would not have to provide specific work papers, which is a violation of IRS rules against divulging taxpayer information. According to its terms, the agreement remained in effect for 2 years and was to be amended and re-adopted by the board biennially.<sup>38</sup>

The last committee of CPAs working for the IRS as verifiers of a CPA candidate's work experience appears to have been constituted in 2001.<sup>39</sup> There is no evidence of a subsequent committee or updated checklist.<sup>40</sup> Even if there were a current process in place between the board and the IRS, Mr. Koford acknowledged that a committee of Alaskan CPAs would not be able to verify his attest experience because they could not have observed the work he performed as a Revenue Agent in Texas.<sup>41</sup>

Although Mr. Koford undeniably has considerable experience performing highly technical work for the IRS, he has not been able to document convincingly that his work history meets the specific requirements of the attest function experience necessary for licensure in Alaska as a CPA.

#### **IV. Conclusion**

Mr. Koford did not meet his burden of proving by a preponderance of the evidence that he meets the minimum requirements for a CPA license in Alaska. He provided his supervisor's certification, but he was not able to document his work experience because of the limitations

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<sup>35</sup> Mr. Koford referred to the existence of such an agreement in his prehearing brief. Ms. Forrest had no prior knowledge of the agreement at that time, nor did the two licensing examiners who previously filled the position. Ms. Forrest initiated a thorough search of the division's older program-type files and came across a folder containing the documents to which Mr. Koford was referring. Testimony of Veida Forrest. These documents have been admitted into the record as Exhibit E.

<sup>36</sup> See Exh. E.

<sup>37</sup> See Exh. E at 5-13.

<sup>38</sup> Exh. E at 1, 3.

<sup>39</sup> Exh. E at 42-54.

<sup>40</sup> Testimony of Veida Forrest.

<sup>41</sup> The issue whether entering into such an agreement with the IRS, without adopting a regulation authorizing it, would be an appropriate exercise of the board's authority, is not addressed here because no current agreement exists.

placed on him through his federal employment. Neither was he able to utilize an outdated agreement between the Board and the IRS that was designed to verify an applicant's accounting experience. Because Mr. Koford cannot prove he meets the minimum requirements for licensure, his application for a CPA license in Alaska should be denied.

DATED this 12th day of December, 2008.

By: Signed \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge



**Adoption**

The Alaska Board of Public Accountancy adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 12th day of February, 2009.

ALASKA BOARD OF PUBLIC ACCOUNTANCY

By: Signed  
Signature  
Carla Bassler  
Name  
Chair  
Title

[This document has been modified to conform to technical standards for publication.]