

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

In the Matter of )  
 )  
 MARIA ZARATE ) OAH No. 09-0701-CPA  
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**DECISION**

**I. Introduction**

Maria Zarate petitioned the Board of Public Accountancy to extend the expiration dates of credit for two exams in accordance with 12 AAC 04.200(i). The board denied the request at its regular meeting of October 22-23, 2009. At Ms. Zarate’s request, a hearing was held on March 12, 2010. Ms. Zarate appeared by telephone. Assistant Attorney General Dan Branch represented the Division of Corporations, Business and Professional Licensing (“the division”).

While Ms. Zarate has suffered from very real medical problems that have severely affected her life, she has not met her burden of proving that she lost exam credit due to circumstances beyond her control. The Board’s decision is affirmed.

**II. Facts<sup>1</sup>**

In order to be certified as a certified public accountant in Alaska, applicants must pass each of the four components of the Uniform CPA Examination: Auditing and Attestation (AUD), Business Environment and Concepts (BEC), Financial Accounting and Reporting (FAR), and Regulation (REG). The applicant may take each of these four exams at different times, but all of the exams must be passed within a single eighteen-month period. In order to pass an exam, the applicant must achieve a score of at least 75 on each of the four components. When an applicant achieves a score of 75 or better, the applicant is given credit for that exam, but the credit will expire after eighteen months. Thus, if an applicant has valid credit for all four tests at one time, the applicant may be certified.

The following chart shows Ms. Zarate’s attempts at the four test components, the results, and the expiration date of credit she received for passing scores<sup>2</sup>:

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<sup>1</sup> Except where noted, all of the facts are based on the testimony of Ms. Zarate. Ms. Zarate’s testimony regarding the administration and scoring of the CPA exam was consistent with exam regulations in 12 AAC 04.200.  
<sup>2</sup> Agency Record pages 30-31.

Test Section	Test Date	Score (75+ for credit)	Expiration of Credit
BEC	4/30/2007	76	10/30/2008
AUD	8/15/2007	70	
REG	10/23/2007	49	
AUD	10/23/2007	0 (did not take test)	
AUD	1/29/2008	81	7/29/2009
REG	2/26/2008	70	
REG	4/18/2008	74	
FAR	7/11/08	3	
REG	10/23/2008	77	4/23/2010
FAR	4/04/2009	62	
BEC	7/17/2009	68	
FAR	7/24/2009	66	

Ms. Zarate has been diagnosed with neurocardiogenic syncope, a condition that causes her to suffer episodes of fainting or losing consciousness with little warning. Although her first episode occurred in 2002, Ms. Zarate was not properly diagnosed until December of 2008.<sup>3</sup> Ms. Zarate had few episodes in 2007, but in 2008 she suffered at least six episodes.

Ms. Zarate works as an auditor for a national corporation. Her employer granted Ms. Zarate medical leave starting on January 1, 2009, and she was granted a short term disability claim.<sup>4</sup> This leave was originally intended to last until sometime in March of 2009, but the company extended it until June 15, 2009. Upon Ms. Zarate's return to work, the company made significant accommodations. Ms. Zarate was given a position that did not require the frequent air travel she had previously been required to engage in, and the company provided software that allowed Ms. Zarate to work with field offices remotely. The company gave Ms. Zarate a flexible schedule that allowed unlimited breaks and time off as she needed it. Ms. Zarate has been recovering, but her prescribed medication has come with side effects that include insomnia and dizziness. On October 2, 2009, Ms. Zarate suffered an episode at work that came on so quickly she was not able to get to the floor as she usually does before passing out. In this instance, Ms.

<sup>3</sup> Exhibit 7, testimony of Ms. Zarate.

<sup>4</sup> Exhibit Q, testimony of Ms. Zarate.

Zarate hit her head as she fell to the floor and suffered a mild concussion that resulted in emergency medical transport to the hospital.

In 2010, Ms. Zarate has been working “closer to a normal schedule,” which she describes as working at least nine to five. Her medications have been reduced, and she has recently been allowed to resume air travel, although she still does not drive.

Ms. Zarate suffered the direct effects of her condition on two occasions while taking exams. On October 23, 2007, Ms. Zarate was scheduled to take the REG and AUD exam components, but she had suffered an episode before the time of the exams. Ms. Zarate received a score of only 49 on the REG exam, and she did not take the AUD exam that was scheduled for that day. On July 11, 2008, Ms. Zarate received a score of 3 on the FAR exam. Ms. Zarate testified that upon beginning the exam she felt an episode coming on, and fifteen minutes into the exam she got up and went to the restroom, where she laid down on the floor to avoid injury when she passed out. Ms. Zarate is not certain how long she was unconscious on the floor of the women’s room that day, but upon regaining consciousness she was not in a condition to continue the exam, and she went home. Ms. Zarate’s scores on other days she has taken exams fall within a range from 62 to 81, around the 75 needed to pass. Ms. Zarate’s uncharacteristically low scores of 0, 3, and 49 on those two days corroborate her testimony.

While syncope episodes only affected Ms. Zarate on two occasions, she speculates that her need to take medication may have affected her most recent test. Ms. Zarate testified that

In the last one that I just took, I tried again to sit through the whole entire exam. In this case I was taking medication, but my medication, I am supposed to take it at 9, 12, and 3 p.m., which right now I am getting really close to, and that four-hour exam actually went over the time which I was supposed to take my medication. So, I am not sure if that affected my exam, it could have according to my doctor, because that night I wasn’t feeling well.

## **II. Discussion**

The examination for certified public accountant in Alaska consists of an ethics course, an open book ethics examination, and the computer-based Uniform Certified Public Accountant Examination.<sup>5</sup> The uniform examination is made up of four separate components, and applicants must achieve a score of 75 on each component in order to pass.<sup>6</sup> According to 12 AAC 04.200(g)-(i),

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<sup>5</sup> 12 AAC 04.200(a).

<sup>6</sup> 12 AAC 04.200(b).

(g) ...an applicant

(1) may sit for each section of the Uniform Certified Public Accountant Examination individually, and in any order;

(2) retains credit for any examination section passed for 18 months after the test date, without having to obtain a minimum score on failed sections and without regard to whether the applicant has taken other sections; and

(3) must pass all four sections of the Uniform Certified Public Accountant Examination within an 18-month period.

(h) If an applicant does not pass all four sections of the Uniform Certified Public Accountant Examination in accordance with (g)(3) of this section, credit for any section passed outside of the 18-month period expires, and that section must be retaken.

(i) The board will extend the period of credit for examination sections passes upon a showing, to the board's satisfaction, that the credit was lost due to circumstances beyond the applicant's control.

The issue in this case is whether Ms. Zarate has lost credit for the exam components she passed due to circumstances beyond her control. Ms. Zarate asks that her credit for the BEC test on April 30, 2007, which expired on October 30, 2008, and her credit for the AUD test of January 29, 2008, which expired on July 29, 2009, be extended in accordance with 12 AAC 04.200(i) until April 23, 2010, which would allow her to become licensed if she passes the FAR exam in April. Ms. Zarate has the burden of proving to the board's satisfaction, by a preponderance of the evidence, that she lost credit due to circumstances beyond her control.<sup>7</sup>

There is no dispute that Ms. Zarate has suffered from a serious medical condition for a time spanning at least eight years. This condition has substantially affected Ms. Zarate's life, requiring her to take about half of a year off work, and limiting her ability to work upon her return to employment. Circumstances beyond her control did prevent Ms. Zarate from completing the AUD and REG tests on October 23, 2007, and from completing the FAR test on July 11, 2008.

In spite of these setbacks, Ms. Zarate's condition did not prevent her from passing all four exams within an eighteen-month period. With her credit for the REG and AUD exams still valid, Ms. Zarate took the FAR exam on April 4, 2009, and the BEC exam on July 17, 2009, receiving scores of 62 and 68 respectively. Had Ms. Zarate passed these two exams, she would have passed all four components within an 18-month period and qualified for licensure by examination. The first of these two exams was taken during the time Ms. Zarate was on leave,

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<sup>7</sup> AS 44.62.450(e)(2).  
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and the second shortly after she returned to work, but Ms. Zarate did not testify that her condition directly affected her performance on these two exams. The scores, while not passing level, are not low enough to indicate they were necessarily affected by Ms. Zarate's medical condition. Ms. Zarate took the FAR exam again on July 24, 2009. On this day Ms. Zarate speculates that her medication may have affected her performance, yet she was able to improve her previous score of 62 up to a score of 66.

Without evidence that her medical condition affected her scores on the three tests she took in 2009, and no other evidence of circumstances beyond Ms. Zarate's control affecting her performance on her last three exams, it cannot be said that Ms. Zarate has met her burden of demonstrating that circumstances beyond her control are what caused her to lose credit for the exams she passed in 2007 and 2008.

#### **IV. Conclusion**

Ms. Zarate has not demonstrated that circumstances beyond her control caused her to lose credit for the exam components she passed. The board's decision to deny her petition to extend credit expiration under 12 AAC 04.200(i) is affirmed.

DATED this 18<sup>th</sup> day of March, 2010.

By: Signed  
Dale Whitney  
Administrative Law Judge

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

**Adoption**

This Order is issued under the authority of AS 44.62.500. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 23<sup>rd</sup> day of April, 2010.

By: Signed  
Signature  
Carla J. Bassler  
Name  
Chairperson  
Title