

BEFORE THE IOWA BOARD OF HEARING AID SPECIALISTS

IN THE MATTER OF THE PETITION)	
FOR WAIVER BY:)	
)	Waiver Request No. 18-0001
Lee Seibert, 001058)	
Hearing Aid Specialist)	
)	ORDER
)	GRANTING WAIVER
)	

Pursuant to Iowa Code section 17A.9A and 645 Iowa Administrative Code chapter 18, the Iowa Board of Hearing Aid Specialists (Board) makes the following ruling on the Petition for Waiver submitted by Lee Seibert, Hearing Aid Specialist.

PROCEEDINGS

1. On September 24, 2018, the Petitioner filed a Petition for Waiver requesting a waiver of rule IAC 645-121.3(1) “a” governing supervision of temporary permit holders.
2. Initially licensed in Wisconsin, the Petitioner obtained his Iowa hearing aid specialist license in February 2012. The Petitioner’s license became inactive in January 2017. The Petitioner requested a waiver from the requirement for a supervisor to hold a valid license for two years. The Petitioner reactivated his license in July 2018 and completed 25 hours of continuing education, a 2 hour ethics and law course, and attended the Iowa Hearing Association trade show in September for additional continuing education hours.
3. The Petitioner stated the waiver should be granted because he has extensive experience and training which have prepared him to supervise students.
4. The Board considered the Petition for Waiver at its regularly scheduled board meeting on November 5, 2018.

APPLICABLE LAW

5. Board Rule 645-121.3(1) “a” governs the supervision of temporary permit holders.
6. The Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the Board finds, based on clear and convincing evidence, all of the following:
 - a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
 - b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
 - c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

The Board's rules provide "The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition." 645 IAC 18.10 (1) "A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule." 645 IAC 18.10 (3).

ANALYSIS OF WAIVER CRITERIA

The application of the rule would create an undue hardship on the person for whom the waiver is requested:

1. Petitioner states he was hired to open new Capsure Hearing Centers and train new hire students. If this petition is not granted he could lose his job.

The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person:

2. Petitioner believes waiving the continuing education in this case would not prejudice the substantial legal rights of any other person because he has held a license it was just inactive for a period of time.

The provision of the rule subject to the petition for waiver are not specifically mandated by another provision of law:

3. The requirement found in the Board's administrative rule is not specifically mandated by statute.

Substantially equal protection of the public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested:

4. The public health, safety, and welfare will not be adversely affected by granting this waiver. The Petitioner has completed continuing education requirements and has experience to provide supervision.

ORDER

Board rules are meant to protect the public and guide licensees in their scope of practice. The granting of this waiver allows the petitioner to provide supervision to temporary license holders supported by the facts that the Petitioner has held a license in Iowa since 2012 with no adverse action, currently holds an active license, is in compliance with continuing education requirements and the Petitioner has made a good faith effort to follow the Board's rules.

IT IS THEREFORE ORDERED:

The petition for waiver of sub-rule 645-121.3(1) "a" is **GRANTED**.

Appeals from this order shall be taken in conformance with 645—18.16.

Dated this 5 Day of November, 2018.

A handwritten signature in black ink, appearing to read "Brett Battles". The signature is written in a cursive, flowing style.

Brett Battles, Board Chair
Iowa Board of Hearing Aid Specialists
Lucas State Office Bldg., 5th floor
321 E. 12th St.
Des Moines, IA 50319-0075
