

ISSUED DECEMBER 30, 1999

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

BALBIR S. DHILLON and RANBIR K.	)	AB-7301
DHILLON)	
dba Race Street Liquors	)	File: 21-290374
74 Race Street	)	Reg: 97041543
San Jose, CA 95126,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Stewart A. Judson
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 18, 1999
	)	San Francisco, CA

Balbir S. Dhillon and Ranbir K. Dhillon, doing business as Race Street Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 30 days for appellants' clerk selling an alcoholic beverage on the premises while the license was under suspension, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23300.

Appearances on appeal include appellants Balbir S. Dhillon and Ranbir K. Dhillon, appearing through their counsel, Stephen G. Wright, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas Allen.

¹The decision of the Department, dated November 25, 1998, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on March 30, 1994.

Thereafter, the Department instituted a two-count accusation against appellants charging, in count 1, that appellants' clerk, Gurchahan Singh Sandhu, sold an alcoholic beverage to a person under the age of 21, and, in count 2, that appellants' clerk, Joginder Singh Manak ("Manak"), sold a bottle of wine, an alcoholic beverage, while the license was under suspension.

The matter was originally set for hearing on February 9, 1998. On that date, the Department requested a continuance because the decoy involved in count 1 was not present. The matter was continued and reset to be heard on July 9, 1998. Appellants' clerk, Manak, was killed in an automobile accident on June 7, 1998. On July 8, 1998, the July 9 hearing was continued, at the request of appellants, to August 25, 1998, when the matter was finally heard. At the hearing on August 25, 1998, oral and documentary evidence was received, and the Department moved to dismiss count 1, without prejudice, because the minor could not be at the hearing on that date. The Administrative Law Judge (ALJ) dismissed count 1, but reserved his ruling as to whether the dismissal was with or without prejudice. Testimony was presented by San Jose police officers Pedro Urrutia and Paul Spagnoli and by one of the appellants, Balbir S. Dhillon, concerning count 2.

Subsequent to the hearing, the Department issued its decision which determined that count 1 should be dismissed with prejudice, and that the violation alleged in count 2 had occurred.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) granting of the Department's untimely request for a continuance on February 9, 1998, was an abuse of discretion resulting in severe prejudice to appellant, and (2) the findings were not supported by substantial evidence.

DISCUSSION

I

Appellants contend that the ALJ's grant of the Department's request for a continuance from February 9 to July 9, 1998, was an abuse of discretion. They argue that the continuance severely prejudiced them because Manak, the clerk, who was present and ready to testify on February 9, 1998, as their prime witness, was killed in an automobile accident on June 7, 1998.

At the August 25 hearing, appellants provided a copy of the transcript (CTT) of the April 21, 1998, testimony at Manak's criminal trial. The same police officers, Urrutia and Spagnoli, testified at that trial, as well as Manak.

Although the ALJ had the criminal trial transcript, appellants argue that he did not have the benefit of being able to evaluate Manak's testimony in person and to appreciate his difficulty with the English language. (Manak spoke Punjabi and had an interpreter at the criminal trial. When asked by the prosecutor "Do you understand a lot of what I'm asking you?" Manak replied "Half of this I could understand, but half of this I cannot" [CTT 40].) In addition, appellants contend, Manak's absence made it impossible to ask him any new questions.

A party is ordinarily required to apply for the continuance within 10 working days after discovering the good cause for the continuance, unless that party did not cause and sought to prevent the condition or event establishing the good cause. (Gov. Code §11524, subd. (b).) Continuances are granted or denied in the discretion of the ALJ for good cause shown. (Gov. Code §11524; Givens v. Department of Alcoholic Beverage Control (1959) 176 Cal.App.2d 529 [1 Cal.Rptr. 446]; Dresser v. Board of Medical Quality Assurance (1982) 130 Cal.App. 3d 506, 518 [181 Cal.Rptr. 797].) “[T]he factors which influence the granting or denying of a continuance in any particular case are so varied that the trial judge must necessarily exercise a broad discretion.” (Arnett v. Office of Admin. Hearings (1996) 49 Cal.App. 4th 332, 343 [56 Cal.Rptr.2d 774], quoting 7 Witkin, Cal. Procedure (3d ed. 1985) Trial, §9, p. 26.)

The continuance was requested by the Department on February 9, 1998, because the minor decoy involved in count 1 was unavailable. Department counsel stated that efforts had been made to have the decoy appear, but these had been thwarted somehow by the decoy’s military service situation, which was beyond the control of the Department. No objection by the appellants appears in the record, although they were present and ready to proceed. The bona fide and unforeseen unavailability of a witness is good cause for the granting of a continuance. (See, e.g., Standards of Judicial Administration Recommended by the Judicial Council, §9.)

“[S]ince it is impossible to foresee or predict all of the vicissitudes that may occur in the course of a contested proceeding [citation omitted], the determination of a request for a continuance must be based upon the facts and circumstances of the case as they exist at the time of the determination.” (Arnett v. Office of Admin. Hearings, supra.) It was Manak’s death, a factor which could not have been anticipated on February 9, which created a disadvantage for appellants, not the continuance.

Appellants have not shown that the ALJ abused his discretion in granting the continuance.

II

Appellants contend the findings were not supported by substantial evidence. In essence, they re-argue all the discrepancies between officer Urrutia’s testimony at the administrative hearing and Manak’s testimony at the criminal trial.

The scope of the Appeals Board’s review is limited by the California Constitution, by statute, and by case law. In reviewing the Department’s decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department’s decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

²The California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic

"Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) "[T]he focus is on the quality, not the quantity of the evidence. Very little solid evidence may be 'substantial,' while a lot of extremely weak evidence might be 'insubstantial.'" (Toyota Motor Sales U.S.A., Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871-872 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

The Appeals Board is bound by the findings of fact of the Department, even if contrary findings might be equally or even more reasonable, as long as the findings are supported by substantial evidence. (Harris v. Alcoholic Beverage Control Appeals Board (1963) 212 Cal.App.2d 106 [28 Cal.Rptr. 74,78].) Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which the positions of both the Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Department and the license-applicant were supported by substantial evidence); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

The determination of a witness's credibility testimony is within the reasonable discretion of the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) The findings demonstrate that the ALJ believed the officer's testimony more than Manak's testimony from the criminal trial.

The ALJ's findings and credibility determinations bind this Board even if a contrary finding might be just as reasonable. It is not this Board's role to re-hear the case and re-weigh the evidence; that is the role of the ALJ and the Department. There is substantial evidence here to support the findings and determinations of the Department and there has been no showing that the Department exceeded its jurisdiction in making its decision.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.