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

AB-8818
File: 47-413186 Reg: 07066552

CLAIM JUMPER RESTAURANTS, LLC, dba Claim Jumper
27845 Santa Margarita Parkway, Mission Viejo, CA 92691,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: December 4, 2008
Los Angeles, CA

ISSUED MARCH 19, 2009

Claim Jumper Restaurants, LLC, doing business as Claim Jumper (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which suspended its on-sale general bona fide public eating place license for 15 days, 5 of which were conditionally stayed for one year, for its bartender having furnished a bottle of Corona Extra beer, an alcoholic beverage, to David Sedlacek, an 18-year-old Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Claim Jumper Restaurants, LLC, appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree

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[1]The decision of the Department, dated January 23, 2008, is set forth in the appendix.

Wortham.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general bona fide public eating place license was issued on July 19, 2004. Thereafter, in July or August 2007, the Department instituted an accusation against appellant charging the sale or furnishing of an alcoholic beverage to David Sedlacek, an 18-year-old minor, on June 7, 2007. Although not stated in the accusation, Sedlacek was acting as a decoy for the Department.

An administrative hearing was held on November 15, 2007, at which time documentary evidence was received and testimony concerning the violation charged was presented by Department investigator Will Salao and David Sedlacek, the decoy. Jason Mendenhall testified on behalf of appellant. Undisputed evidence established that appellant's bartender asked the decoy for his identification, and was given the decoy's California driver's license. The license showed the decoy's true age, and carried both a red stripe with the words, "AGE 21 IN 2010," and a blue stripe with the words, "PROVISIONAL UNTIL AGE 18 IN 2007." The bartender examined the license for a few seconds, handed it back to the decoy, opened a bottle of Corona Extra beer and placed it on the bar counter in front of the decoy. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and that no affirmative defense had been established. Whether the decoy's appearance complied with Department Rule 141(b)(2), and whether there was a face-to-face identification that complied with Department Rule 141(b)(5), were in dispute, and the administrative law judge (ALJ) found that there had been compliance with both rules.

Appellant filed a timely notice of appeal in which it raises the following issues: (1) The Department lacked appropriate screening mechanisms to ensure the non-appearance of bias; (2) the Department engaged in improper ex parte communications; (3) the Department's failure to provide a complete record to the Appeals Board constitutes reversible error;[2] (4) the Department denied appellant a reasonable opportunity to defend this action by its denial of appellant's motion to compel discovery seeking the identity of other licensees who sold to this decoy; (5) the face to face identification conducted by the Department failed to comply with Rule 141(b)(5); (6) the decoy did not display the appearance required by Rule 141(b)(2); and (7) the decision fails to explain the basis for its credibility determination. Issues 1 and 2 are interrelated and will be discussed together. Appellant has filed a motion to augment the record by the inclusion of any ABC Form 104 and related documents, and General Order No. 2007-09 and related documents, and has also suggested that the Board withhold its decision until a pending matter is decided by the California Supreme Court.

DISCUSSION

I and II

Appellant contends that the Department lacked appropriate screening mechanisms ensuring the non-appearance of bias, and that it engaged in ex parte communications in violation of the Administrative Procedure Act. Appellant argues that the adoption by the Department of General Order No. 2007-09 is insufficient to

[2] Other than its bare assertion that the administrative record is incomplete, appellant's brief is silent as to the basis for this claim. We are unwilling to guess at what it is appellant complains of. As a consequence, we are unable to address the issue.

demonstrate "how, when, where, and by whom the directives found therein were implemented and actually given full force and effect." (App. Br., p.5.)

Appellant's argument that the burden is on the Department to prove the existence of a system and procedure to eliminate the appearance of bias and ensure the non-existence of ex parte communications ignores the impact of the General Order and the provisions of Evidence Code section 664. Section 664 provides that "It is presumed that official duty has been regularly performed." The annotations to section 664 (29B pt. 2 West's Ann. Evid. Code, foll. §664, pp. 216 et seq.) demonstrate that this presumption is regularly relied upon in support of decisions of administrative agencies and departments. There is no reason why it should not apply in this case, in light of the Department's adoption of the General Order on August 10, 2007, prior to the administrative hearing in this matter.

The administrative hearing in this case took place on November 15, 2007. The General Order sets forth changes in the Department's internal operating procedures which the Director has determined are "the most effective approach to addressing the concerns of the courts and to avoid even the appearance of improper communications," changes which consist of "a reassignment of functions and responsibilities with respect to the review of proposed decisions." The Order, directed to all offices and units of the Department, provides:

> **Background**:
> In 2006 the California Supreme Court found that the Department's practice of attorneys preparing a report following an administrative hearing, and the Director and his advisors having access to or reviewing that report, violated the Administrative Procedures [*sic*] Act's prohibition against *ex parte* communications. Subsequent cases in the courts of appeal extended the reasoning of the Supreme Court in holding that such a statutory violation continues to exist even if the Department adopted the

administrative law judge's proposed decision without change. In addition, the courts of appeal placed the burden on the Department to establish that no improper *ex parte* communication occurred in any given case.

Procedures:

Although the Supreme Court held that a physical separation of functions within the Department is not necessary, in light of subsequent appellate decisions the Director has determined that the most effective approach to addressing the concerns of the courts and to avoid even the appearance of improper communications, a reassignment of functions and responsibilities with respect to the review of proposed decisions is necessary and appropriate.

Effective immediately, the following protocols shall be followed with respect to litigated matters:

1. The Department's Legal Unit shall be responsible for litigating administrative cases and shall not be involved in the review of proposed decisions, nor shall the Chief Counsel or Staff Counsel within the Legal Unit advise the Director or any other person in the decision-making chain of command with regard to proposed decisions.

2. The Administrative Hearing Office shall forward proposed decisions, together with any exhibits, pleadings and other documents or evidence considered by the administrative law judge, to the Hearing and Legal Unit which shall forward them to the Director's Office without legal review or comment.

3. The proposed decision and included documents as identified above shall be maintained at all times in a file separate from any other documents or files maintained by the Department regarding the licensee or applicant. This file shall constitute the official administrative record.

4. The administrative record shall be circulated to the Director via the Headquarters Deputy Division Chief, the Assistant Director for Administration and/or the Chief Deputy Director.

5. The Director and his designees shall act in accordance with Government Code Section 11517, and shall so notify the Hearing and Legal Unit of all decisions made relating to the proposed decision. The Hearing and Legal Unit shall thereafter notify all parties.

6. This General Order supersedes and hereby invalidates any and all policies and/or procedures inconsistent to [*sic*] the foregoing.

The obvious purpose of the Order was to amend the internal operating procedures of the Department that resulted in more than 100 cases having been remanded to the Department by the Appeals Board for an evidentiary hearing regarding claims of ex parte communications between litigating counsel and the Department's decision makers.[3] Although not identified in the Order, the "appellate decisions" to which it refers undoubtedly include in their numbers the decision by the California Supreme Court in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [50 Cal.Rptr.3d 585] *(Quintanar)*, and Court of Appeal decisions in *Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Board* (2007) 149 Cal.App.4th116 [57 Cal.Rptr.3d 6] (*Chevron*), and *Rondon v. Alcoholic Beverage Control Appeals Board* (2007) 151 Cal.App.4th 1274 [60 Cal.Rptr.3d 295] (*Rondon*), case authorities routinely cited in appellate briefs asserting that the Department engaged in improper ex parte communications.

The Order effectively answers the question raised in earlier appeals, i.e., whether the Department's long standing practice of having its staff attorneys submit ex parte recommendations in the form of reports of hearing, has been officially changed to comply with the requirements of *Quintanar* and the cases following it. It replaces an earlier, less formal procedure used by the Department to address the problems of ex parte communications, one which the Appeals Board found was not an effective cure for the problem endemic within the Department, with one intended to isolate the Department decision maker from any potential advice or comment from the attorney

[3]We understand that these cases were ultimately dismissed by the Department.

who litigated the administrative matter, as well as the Department's entire Legal Unit.

Appellant has not affirmatively shown that any ex parte communication took place in this case. Instead, it has relied on the authorities cited above *(Quintanar, supra; Chevron, supra; Rondon, supra*), for its argument that the burden is on the Department to disprove the existence on any ex parte communication.

We are now satisfied, by the Department's adoption of General Order No. 2007-09, that it has met its burden of demonstrating that it operated in accordance with law. Without evidence that the procedure outlined in the Order was disregarded, we believe it would be unreasonable to assume that any ex parte communication occurred.[4]

While the Order does not specifically address the question whether there was an adequate screening procedure to prevent Department attorneys who acted as litigators from advising the Department decision maker in other matters, by its terms it appears to resolve that issue by effectively removing the litigating attorneys from the review process entirely.

In light of the result we reach, we see no need to withhold our decision in this matter until the California Supreme Court resolves *Morongo Band of Mission Indians v. State Water Resources Control Board* (rev. granted October 24, 2007, S155589). Similarly, there is no need to augment the record as requested by appellant.

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[4] Appellant suggests that the Department "has apparently taken the words of the Court of Appeal in *Morongo* [*Morongo Band of Mission Indians v. State Water Resources Control Board]* to heart by dividing its staff accordingly," and that the Appeals Board "should take the Department's actions as its word." (App. Mot. To Aug., p.5.) We welcome the suggestion.

III

See Note 2, p. 3.

IV

Appellant asserts in its brief that the denial of its pre-hearing Motion to Compel discovery was improper and denied it the opportunity to defend this action. Its motion was brought in response to the Department's failure to comply with those parts of its discovery request that sought "any findings by the Administrative Law Judge or the Department of ABC that the decoy does not appear to be a person reasonable [*sic*] expected to be under 21 years of age" and all decisions certified by the Department over a four-year period “where there is therein a finding or an effective determination that the decoy at issue therein did not display the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented the seller of alcoholic beverages at the time of the alleged offense.”

ALJ Gruen, who heard the motion, denied it because he concluded it would cause the Department an undue burden and consumption of time and because appellant failed to show that the requested items were relevant or would lead to admissible evidence. Appellant argues that the items requested were expressly included as discoverable matters in the Administrative Procedure Act (Gov. Code, § 11340 et seq.) and the ALJ used erroneous standards in denying the motion.

“[T]he exclusive right to and method of discovery as to any proceeding governed by [the APA]” is provided in section 11507.6. (Gov. Code, § 11507.5.) The plain meaning of this is that any right to discovery that appellant may have in an

administrative proceeding before the Department must fall within the list of specific items found in Government Code section 11507.6. Appellant asserts that the items requested are discoverable under the provisions of subdivision (b), (d), and (e) of section 11507.6. Those paragraphs provide that a party "is entitled to . . . inspect and make copies of ..."

> ¶...¶
> (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
> ¶...¶
>
> (c) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
>
> (e) Any other writing or thing which is relevant and which would be admissible in evidence; ...

Appellant argues it is entitled to the materials sought because previous findings of the Department are “statements” made by a party "pertaining to the subject matter of the proceeding," findings made by an ALJ are relevant “writings” that would be admissible in evidence, and the photographs are "writings" that appellant would offer into evidence so the ALJ could compare them to the decoy present at the hearing. Appellant argues the material requested would help it prepare a defense under rule 141(b)(2) by knowing what criteria have been considered by ALJ’s and the Department when deciding that a decoy's appearance violated the rule.[5] It would then be able, it asserts, to compare the appearance of the decoy who purchased alcohol at its premises with the appearance of other decoys who were found

[5] In all cases charging sale-to-minor violations the Department must produce the minor involved unless the minor is deceased or too ill to be present, or the minor’s presence is waived by the respondent. (Bus. & Prof. Code, § 25666.)

not to comply with rule 141(b)(2).

It is conceivable that each decoy who was found not to display the appearance required by the rule had some particular attribute, or combination of attributes, that warranted his or her disqualification. We have considerable doubt, however, that any such attributes, which an ALJ would only be able to examine from a photograph or written description, would be of any assistance in assessing the appearance of a different decoy who is present at the administrative hearing.[3]

The most important attribute at the time of the sale is probably the decoy's facial countenance, since that is the feature that confronts the clerk more than any other. Yet, in every case it is an ALJ's assessment of a decoy's overall appearance that matters, not simply a focus on some narrow aspect of that appearance.

We know from our own experience that appellant's attorneys represent well over half of all appeals this Board hears. We must assume, therefore, that the vast bulk of the information it seeks is already in the possession of its attorneys. This, coupled with the questionable assistance this information could provide to an ALJ in assessing the appearance of a decoy present at the hearing, persuades us that ALJ Gruen did not abuse his discretion in denying appellant's motion.

We are unwilling to agree with appellant's contention that the language of Government Code section 11507.6 is broad enough to reach findings and decisions of the Department in past cases. The terms "statements" and "writings" as used in that section cannot reasonably be interpreted to reach any and every finding and decision of the Department. A more reasonable understanding of the terms is that they refer to statements or writings made by a party with respect to the particular subject matter of

the proceeding in which the discovery is sought. To interpret the terms to include any finding or decision by the Department in previous cases over a period of years which contained an issue similar to the one in the case being litigated would countenance the worst kind of fishing expedition and would unnecessarily and unduly complicate and protract any proceeding.

Appellant has cited no authority for its contention, and we are unaware of any such authority. Appellant would have this Board afford it the broad discovery that is available in civil cases, well beyond what is authorized by section 11507.6. We are not permitted to do so.

Appellant also contends that the APA allows denial of a motion to compel discovery only in the cases of privileged communications or when the respondent party lacks possession, custody, or control over the material. Therefore, it argues, the denial of the motion because the discovery request was burdensome, would require an undue consumption of time, was not relevant, and would not lead to admissible evidence, was clearly in contravention of the APA discovery provisions.

Appellant's contention is based on the false premise stated in its brief:

> In the present case, the ALJ denied Appellant's request for discovery on grounds not contemplated by Gov. Code §§ 11507.6 and 11507.7. Those two Government Code Sections provide the "exclusive right to and method of discovery," Govt. Code § 11507.5, and *similarly state the objections upon which the Department may argue and an ALJ may rely upon in deciding a Motion to Compel. See* Govt. Code §§11507.6 & 11507.7. (Emphasis added.)

This premise is false because it assumes, without any authority, that the two statutes state the sole bases on which a motion to compel may be denied. No such restriction appears in the statutes. The reasons given by the ALJ for denying the

motion were well within his authority. Those reasons also provided a reasonable basis for the outright denial of the motion instead of simply limiting the scope of the discovery.

V

Department Rule 141(b)(5) (4 Cal. Code Regs., §141(b)(5)) requires that, prior to the issuance of any citation, the peace officer directing the decoy "shall have the minor decoy who purchased the alcoholic beverages ... make a face to face identification of the alleged seller of the alcoholic beverages."

In the appeal of *Chun* (1999) AB-7287, this Board stated:

> The phrase "face to face" means that the two, the decoy and the seller, in some reasonable proximity to each other, acknowledge each other's presence, by the decoy's identification, and the seller's presence such that the seller is, or reasonably ought to be, knowledgeable that he or she is being accused and pointed out as the seller.

Relying upon the testimony of its manager, appellant contends that "[I]t is abundantly clear that the clerk [*sic*] in this case was not reasonably aware that he was being identified as the seller." (App. Br., p.25.

The bartender did not testify. The manager's testimony is not that no identification took place, but rather that he did not see the decoy identify the bartender. He testified only that he saw the decoy and the bartender being photographed together, and that he saw no identification after that.

Will Salao, a Department district administrator with the Inglewood office at the time of his testimony, testified that he participated in the decoy operation in question. He observed the transaction, and advised the bartender he had just furnished beer to a minor. The bartender excused himself, and returned with his manager. A photograph (Exhibit 2) was taken of Salao, the decoy, and the bartender. Salao further testified

that after the photograph was taken, he asked the decoy who sold him the beer. The decoy pointed to the bartender as the one who furnished the beer. The decoy and the bartender were facing each other while three feet apart. It is reasonable to assume that this was the photograph appellant's manager saw taken.

The decoy also testified that he identified the bartender as the seller, that the two were three feet apart when he did so, and both were making eye contact. He did not say whether this took place before or after the photograph identified as Exhibit 2 was taken.

Appellants are asking this Board to reweigh the evidence and reach a conclusion different from that of the ALJ and the Department. The Board is not entitled to do this.

> We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. (*CMPB Friends* [(2002)] 100 Cal.App.4th 1250 at 1254 [122 Cal.Rptr.2d 914]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779]; [Bus. & Prof. Code] §§ 23090.2, 23090.3.) We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. (See *Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734] (*Lacabanne*).) The function of an appellate Board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd*. (*Masani*) (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

The manager's testimony that he did not see the decoy identify the bartender as the seller does not squarely contradict the testimony of both Salao and the decoy that an identification took place. Therefore, we cannot say the ALJ erred in giving more weight to the testimony of the Department investigator and the decoy than to appellant's

manager.

Appellant's contention must be rejected.

VI

Department Rule 141(b)(2) (4 Cal. Code Regs. §141(b)(2)) provides:

> The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense.

Appellant contends that the decoy in this case did not display that appearance. It argues that photographs of the decoy that indicate the presence of a "5 o'clock shadow," coupled with the opinion testimony of appellant's manager, compel a conclusion contrary to that reached by the ALJ.

This is, once again, a partisan litigant's view of the decoy's appearance that we are asked to accept. As we have said many times, we will defer to the ALJ's finding on this issue unless it can be said to be demonstrably wrong.

The ALJ addressed the decoy's appearance in Findings of Fact 5, 11, and 12:

> FF 5: Sedlacek appeared at the hearing. He stood about 5 feet, 4 inches tall and weighed approximately 128 pounds. On June 7, 2007, at Respondent's [restaurant], Sedlacek was about the same height but he was unsure of his weight. At the store [*sic*] Sedlacek was dressed as is shown in Exhibits 2, 3A and 3B, with blue jeans, black sneakers and a black short-sleeved T-shirt over a blue long-sleeved shirt. The black T-shirt contained a witty saying printed on the front. (*Id*.) As is seen in Exhibits 3A and 3B, the decoy's hair was closely trimmed all over, but appeared to be spiked up a bit. On June 7, 2007, at Respondent's store [*sic*] Sedlacek had no facial hair, but did wear a wristwatch, though it was not visible. Decoy Sedlacek dressed and appeared substantially the same at the hearing as he did at Respondent's Licensed Premises on June 7, 2007.
>
> FF 11: David Sedlacek had worked as a decoy on a total of three or four different occasions. On June 7, 2007, he visited more than just Respondent's restaurant. He was sold alcoholic beverages at other locations that date, although no ratio of no-sales to sales was established.

> FF 12: Decoy Sedlacek is a male adult who appears his true age, 18 years of age both at Respondent's Licensed Premises and at the hearing. Based on his overall appearance, *i.e*., his physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance/conduct in front of Respondent's bartender at the Licensed Premises on June 7, 2007, Sedlacek displayed the appearance that could generally be expected of a person less than 21 years of age under the actual circumstances presented to the clerk [*sic*]. Sedlacek appeared his true age.

We are satisfied that the ALJ's careful consideration of Sedlacek's appearance is free of error. Where the ALJ sees the decoy in person and uses the correct standard to make his or her determination as to the apparent age of the decoy, we must conclude that substantial evidence supports the determination, at least in the absence of any compelling evidence to the contrary. (See *The Southland Corporation/ Amir* (2001) AB-7464a (fn. 2).)

VII

Appellant contends that the ALJ failed to provide an adequate basis for his credibility determinations. Citing Government Code section 11425.50, subdivision (b),[2] and *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 596 [128 Cal.Rptr.2d 514], appellant argues that the ALJ "cannot merely believe certain witnesses and disbelieved [sic] other [sic], without identifying any 'observed demeanor, manner, or attitude' of the witnesses." (App. Br., p. 11.) Appellants contend the ALJ erred in determining that appellant's manager was not a credible witness, and, instead, accepted the testimony of the Department investigator and the decoy that a face-to-face identification had taken place.

The Law Revision Comments which accompany this section state that it adopts the rule of *Universal Camera Corp. v. National Labor Relations Board* (1951) 340 U.S. 474 [71 S.Ct. 456], requiring that the reviewing court weigh more heavily findings by the

trier of fact (here, the administrative law judge) based upon observation of witnesses than findings based on other evidence.

We begin by stating the general principle that it is the province of the ALJ, as the trier of fact, to make determinations as to witness credibility. *(Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) The Appeals Board will not interfere with those determinations in the absence of a clear showing of abuse of discretion.

The issue raised by appellants in this case has been before the Board on a number of occasions, and the arguments made by appellants have been rejected without exception. The issue was discussed at length in *7-Eleven, Inc./Navdeep Singh* (2002) AB-7792, a case where appellants argued that, because the decoy was the only witness to testify about what occurred in the premises during the sale of the alcoholic beverage, and his testimony suffered from striking credibility defects, the ALJ was required to explain why the decoy's testimony was sufficient to support the Department's accusation. The Board rejected this argument, stating:

> Section 11425.50 is silent as to the consequences which flow from an ALJ's failure to articulate the factors mentioned.[3] However, we do not think that any failure to comply with the statute means the decision must be reversed. It is more reasonable to construe this provision as saying simply that a reviewing court may give greater weight to a credibility determination in which the ALJ discussed the evidence upon which he or she based the determination. We do not think it means the determination is entitled to no weight at all.

This Board has consistently rejected counsel's insistence, in other appeals, that the federal appeals court case of *Holohan v. Massanari* (9th Cir. 2001) 246 F.3d 1195 requires reversal of a decision that does not explicitly explain the basis of a credibility determination. (See, e.g., *7-Eleven and Huh* (2001) AB-7680.) There is no reason to

decide differently in the present appeal. (See also *Chuenmeersi* (2002) AB-7856, and *7-Eleven, Inc./Janizeh* (2005) AB-8306.)

Appellants' reliance on *California Youth Authority v. State Personnel Bd.*, *supra*, is misplaced for several reasons. First, the case declined to express any view on whether a failure of an ALJ to identify observations of witness demeanor, manner, or attitude rendered his or her decision defective. (*California Youth Authority*, *supra*, 104 Cal.App.4th at 596, n. 11.) Second, it is not at all clear that the ALJ did not indicate why he rejected Mendenhall's testimony. He obviously disagreed with Mendenhall's observation that the decoy displayed a five o'clock shadow (see Conclusions of Law 4 and 5).

We have carefully reviewed the record, and are firmly satisfied that the decision, its findings, and the ALJ's credibility determination are supported by substantial evidence.

ORDER

The decision of the Department is affirmed.[6]

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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

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