

ISSUED JANUARY 21, 1998

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

JUAN F. VERGARA	)	AB-6816
dba El Chubasco Restaurant)	
5137 York Boulevard	)	File: 47-227263
Los Angeles, CA 90042,	)	Reg: 96036095
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	October 1, 1997
	)	Los Angeles, CA

Juan F. Vergara, doing business as El Chubasco Restaurant (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ that suspended his license for 10 days, for appellant's employee having furnished an alcoholic beverage to an obviously intoxicated person, 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 §25602, subdivision (a).

¹The decision of the Department, dated February 20, 1997, is set forth in the appendix.

Appearances on appeal include appellant Juan F. Vergara, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general eating place license was issued on March 9, 1989. Thereafter, the Department instituted an accusation against appellant charging that appellant's bartender, Lourdes Pedilla, had sold a beer to an obviously intoxicated patron, Roberto Segura.

An administrative hearing was held on October 1, 1996, and January 13, 1997, at which times oral and documentary evidence was received. At those hearings, testimony was presented concerning the appearance and actions of Pedilla, Segura, and LAPD officer Duarte in connection with the alleged violation.

Subsequent to the hearing, the Department issued its decision which determined that appellant had violated Business and Professions Code §25602, subdivision (a).

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the single issue of whether the decision was supported by substantial evidence.

DISCUSSION

Appellant contends that there was not substantial evidence to support the finding of service of an alcoholic beverage to an obviously intoxicated patron.

Appellant points out that the testimony of the bartender, the patron involved, and the appellant all contradicted that of the police officer. Appellant concludes that the "preponderance and weight of the evidence clearly shows Mr. Segura was not obviously intoxicated.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a 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].)

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].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

The credibility of a witness's testimony is determined within the reasonable discretion accorded to 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].)

Appellant is, in essence, asking this Board to independently weigh the evidence presented and to redetermine the credibility of the witnesses. Applying the above-stated guidelines to this appeal, it is clear that this Board does not have the authority to re-examine and re-weigh the evidence or the credibility of the witnesses.² It is the Department alone that may reconsider the facts and evidence pursuant to a petition for reconsideration; that is not the province of this Board in an appeal from the action of the Department.

CONCLUSION

The decision of the Department is affirmed.³

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²We note that this Board was required to examine the record without the aid of any real findings of fact in the decision of the Department. Simply parroting the accusation is not helpful to this Board or to appellant, who might not have felt compelled to make this appeal if some explanation of the facts that led to the decision against him had been included in the decision.

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 decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate 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.