

NOTICE
Decision filed 10/08/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130587-U

NO. 5-13-0587

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

RICHARD DALE, SR.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Franklin County.
)	
v.)	No. 12-MR-38
)	
BOARD OF TRUSTEES OF THE FIREFIGHTER)	
PENSION FUND OF THE CITY OF BENTON,)	
ILLINOIS, JEFF COLEMAN, LAURA AUTEN,)	
LISA STEARNS, and SHANE COCKRUM,)	Honorable
)	T. Scott Webb,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Both Pension Board and circuit court correctly denied the plaintiff's request for recalculation of pension award on the basis of lack of jurisdiction when appeal was filed eight years after the award of benefits.
- ¶ 2 Plaintiff, Richard Dale, Sr., filed a petition with defendant, Board of Trustees of the Firefighter Pension Fund of the City of Benton (Board), seeking recalculation of his pension award and recoupment of underpayments. The Board denied Dale's request on the basis of lack of jurisdiction. Dale appealed to the circuit court of Franklin County which affirmed the Board's order. Dale now appeals to this court. We affirm.

¶ 3 Dale worked for the City of Benton as a firefighter from 1975 to 2003 when he retired. Dale applied for disability pension benefits, and on May 25 and May 30 of 2003, the Board met and discussed Dale's application for a disability pension. Dale was present at the Board meeting when the decision to award him benefits was announced. The Board's decision was reflected in the minutes of the meetings, but Dale never received any formal written notice from the Board indicating that he had been awarded benefits or how the benefits were calculated. It should be noted that Dale served as a trustee on the Board for approximately 20 years, and served as president for approximately 15 of those years. In June of 2003, Dale began collecting, in person, his monthly pension checks at the Benton City Hall.

¶ 4 Sometime in 2010, Dale concluded that the benefits he had been receiving were incorrect. In November of 2011, Dale submitted a letter to the Board alleging that his benefits had been miscalculated and requested that the miscalculation be corrected. A hearing was held on May 3, 2012, before the Board in which Dale presented evidence of his claim. At the hearing, it was made clear that the only issue before the Board was whether it had jurisdiction to hear Dale's claim. On July 20, 2012, the Board issued an order denying Dale's recalculation of his pension benefits. The Board found that it lacked jurisdiction because Dale failed to seek review within 35 days of receiving his pension award, as set forth in section 3-103 of the Administrative Review Law of the Code of Civil Procedure (735 ILCS 5/3-103 (West 2012)). The Board's decision further indicated that there were no statutory means available for Dale to seek recalculation of the alleged underpayments. Dale countered that the 35-day provision did not apply because a final

order was never entered and he was never served with a copy of the Board's May 2003 decision. The circuit court affirmed the Board's decision. The court determined that "Dale's receipt of the pension payments, when considered in light of his application and his attendance at the Board's May 30, 2003, hearing are enough to satisfy the requirements" to constitute an administrative decision. Dale therefore had 35 days from the date he received his first pension payment to appeal the Board's decision. Given that we are to review the decision of the administrative agency rather than that of the circuit court (see *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504, 877 N.E.2d 1101, 1112 (2007)), Dale now requests that we reverse the decision of the Board and remand for recalculation of his benefits.

¶ 5 Review of firefighter pension board decisions is governed by the Administrative Review Law. See 40 ILCS 5/4-139 (West 2012). The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)) provides that the factual findings of an administrative agency are *prima facie* true and correct. See 735 ILCS 5/3-110 (West 2012). When faced with a case involving the legal effect of undisputed facts, the issue is then a matter of law, and the standard of review is *de novo*. *Denton v. Civil Service Comm'n of the State of Illinois*, 277 Ill. App. 3d 770, 773, 661 N.E.2d 520, 524 (1996). Likewise, whether a party's due process rights were violated during an administrative hearing is a question of law that we review *de novo*. *Buckner v. University Park Police Pension Fund*, 2013 IL App (3d) 120231, ¶ 21, 983 N.E.2d 125.

¶ 6 Again, because decisions of pension boards are subject to the Administrative Review Law, the Board's decision can be reviewed only pursuant to that law. *Sola v.*

Roselle Police Pension Board, 342 Ill. App. 3d 227, 230-31, 794 N.E.2d 1055, 1057-58 (2003). The review of a decision under the Administrative Review Law, initiated either by an agency or an individual appearing before it, is limited to a 35-day period after the decision is issued. This limit is jurisdictional. *Sola*, 342 Ill. App. 3d at 230-31, 794 N.E.2d at 1057-58. Accordingly, the Board lacked jurisdiction to reconsider its decision after the expiration of the 35-day period. *Sola*, 342 Ill. App. 3d at 231, 794 N.E.2d at 1058. Recognizing that the 35-day appeal period has long since passed, Dale counters that the Board's decision was void because a final order was never entered and that the 35-day period does not apply. We disagree.

¶ 7 According to section 3-101 of the Administrative Review Law, an "administrative decision" is defined as: "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3-101 *et seq.* (West 2012). In other words, a final and binding decision by an administrative agency requires, at the very least, that the agency has taken some definitive action with regard to the application before it and the applicant has been informed of that action. *Sola*, 342 Ill. App. 3d at 232, 794 N.E.2d at 1058. The actions of the Board on May 30, 2003, constituted an "administrative decision." The Board's decision to allow benefits to be paid to Dale clearly affected his legal rights and terminated the proceedings. Dale was informed of the Board's decision through his presence at the Board meeting when the benefits were awarded to him. Confirmation of his knowledge of the Board's decision is established by his picking up of monthly benefit

checks in person at city hall. Dale argues, however, that the decision was not in writing, and therefore, under section 10-50(a) of the Illinois Administrative Procedure Act (5 ILCS 100/10-50(a) (West 2012)), the decision was void.

¶ 8 Section 10-50 of the Illinois Administrative Procedure Act provides in part:

"A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. *** All agency orders shall specify whether they are final and subject to the Administrative Review Law." 5 ILCS 100/10-50(a), (b) (West 2012).

The language of the statute requires that the decision be in writing *or* stated in the record. The minutes of the Board meeting of May 2003 state in the record the disposition taken by the Board regarding Dale's application for disability benefits. The decision therefore did not have to be in writing. The first prong has been met. Section 10-50(a) further states that upon request, a copy of the decision or order shall be delivered or mailed to each party. Nowhere in the record has Dale alleged that he requested a copy of the decision or order to be delivered or mailed to him. This prong is therefore of no consequence. Again, Dale was sufficiently informed of the action of the Board by his attendance at the Board meeting where the decision was announced. Section 10-50(a) also states that a final decision shall include findings of fact and conclusions of law. 5 ILCS 100/10-50(a) (West 2012). Here, the findings of the Board are meager at best, but they do reflect that letters from Dale's doctors were submitted to the Board members and that the letters stated that Dale was incapable of returning to his former type of

employment as a fireman due to injuries he received on the job and "other related complication." The Board members then voted to award Dale a disability pension. We conclude these facts were sufficient to come within the purview of a final decision under the circumstances presented here.

¶ 9 Section 10-50(b) also states that "[a]ll agency orders shall specify whether they are final and subject to the Administrative Review Law." 5 ILCS 100/10-50(b) (West 2012). Clearly, the decision by the Board did not include any such language. Dale contends the lack of any statement that the decision was a final order subject to administrative review requires reversal. We conclude that lack of such language, under the circumstances presented here, was a technical defect that did not affect Dale's due process rights to seek timely appellate review. See *Board of Education of Valley View Community Unit School District No. 365-U v. Illinois State Board of Education*, 2013 IL App (3d) 1120373, ¶ 67, 1 N.E.3d 905. Technical errors do not constitute grounds for reversal of an administrative decision unless it appears that such failure materially affected the rights of any party and resulted in substantial injustice to that party. See *Board of Education of Valley View Community Unit School District No. 365-U*, 2013 IL App (3d) 1120373, ¶ 71, 1 N.E.3d 905. In this instance, there was no substantial injustice. Dale had been a member of the Board for some 20 years and had to have some familiarity with the procedures for filing disability claims when he filed for his own disability pension. More importantly, Dale waited approximately eight years to raise any questions pertaining to the amount of benefits awarded and/or the existence of procedural defects. To allow Dale to wait so many years without making any inquiries would be unjust to the Board

and all other pensioners. Dale had 35 days from the time he began receiving his pension checks to question the amount of his benefits and file for review. According to the language set forth by our supreme court, when a court is exercising special statutory jurisdiction under the administrative review law, the filing period is jurisdictional and judicial review of the administrative decision is barred if the complaint is not filed within the time specified. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 338-39, 770 N.E.2d 177, 187 (2002). This conclusion is consistent with the trend favoring finality of judgments over alleged defects in validity. See *Belleville Toyota, Inc.*, 199 Ill. 2d at 341, 770 N.E.2d at 188. "Because of the disastrous consequences which follow when orders and judgments are allowed to be collaterally attacked, orders should be characterized as void only when no other alternative is possible." *In re Marriage of Vernon*, 253 Ill. App. 3d 783, 788, 625 N.E.2d 823, 827 (1993).

¶ 10 Dale points to the language in section 10-50(c) which provides that "[a] decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of the Act relating to contested cases ***." 5 ILCS 100/10-50(c) (West 2012). The proceedings appear to have been conducted in compliance with provisions of the Act. What was noncompliant was the lack of language stating that the Board's order was final and subject to the Administrative Review Law. Again, this was a technical defect under the circumstances. If Dale had not waited some eight years to file his appeal, and if he had not been a member of the Board for some 20-plus years, perhaps we would view the outcome differently.

¶ 11 We conclude, as did the Board and the circuit court, that "Dale's receipt of the pension payments, when considered in light of his application and his attendance at the Board's May 30, 2003, hearing [were] enough to satisfy the requirements" to constitute an administrative decision. Dale therefore had 35 days from the date he received his first pension payment to appeal the Board's decision. As he did not do so, the Board did not have jurisdiction to consider a recalculation of benefits. We therefore affirm the judgment of the circuit court affirming the decision of the Board.

¶ 12 Dale also argues on appeal that he has the right to have the miscalculation reviewed beyond the 35-day limitation period pursuant to section 3-144.2 of the Illinois Pension Code (40 ILCS 5/3-144.2 (West 2012)), pertaining to the recovery of overpayment of police pension funds due to fraud, misrepresentation or error. Dale recognizes that this provision applies to article 3 police pension funds, but raises an equal protection argument contending that the legislature should have provided a similar mechanism for article 4 firefighter pension funds which would then be applicable to him. This equal protection argument is specious because the article 3 statute to which Dale refers is not even available to a police pensioner who is attempting to correct an underpayment, which is exactly what Dale wishes to accomplish here. See *Rutka v. Board of Trustees of the Cicero Police Pension Board*, 405 Ill. App. 3d 563, 568, 939 N.E.2d 600, 604 (2010). Therefore, we need not address this matter further.

¶ 13 Affirmed.