

No. 1-16-1950

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANNA HALL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
)	
RETIREMENT BOARD OF THE MUNICIPAL)	No. 14 CH 12259
EMPLOYEES', OFFICERS', AND OFFICIALS')	
ANNUITY AND BENEFIT FUND OF CHICAGO;)	
and MUNICIPAL EMPLOYEES', OFFICERS',)	
AND OFFICIALS' ANNUITY AND BENEFIT)	
FUND OF CHICAGO,)	The Honorable
)	David B. Atkins
Defendants-Appellees.)	Judge, presiding.
)	

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* The Retirement Board of the Municipal Employees', Officers', and Officials' Annuity and Benefits Fund of Chicago did not err in its determination that plaintiff's application for duty disability benefits was untimely. We affirm.

¶ 2 This appeal arises from defendant the Retirement Board of the Municipal Employees', Officers', and Officials' Annuity and Benefits Fund of Chicago (the Board)'s ruling denying plaintiff Anna Hall duty disability benefits pursuant to Article 8 of the Illinois Pension Code (the Code) (40 ILCS 5/8-101 *et seq.*). On appeal, plaintiff contends the Board erred in its determination that plaintiff's application for duty disability benefits was untimely and contrary to law. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. On July 28, 1999, plaintiff was employed by the City of Chicago (the City) as a plumber and suffered injuries to her lower back and knee (July 1999 incident). Plaintiff then applied for duty disability benefits from the Municipal Employees', Officers' and Officials' Annuity and Benefits Fund of Chicago (the Fund). The Board granted plaintiff's application and the Fund paid her benefits through September 15, 2003. In addition, the City awarded plaintiff total temporary disability benefits (TTD benefits) under the Worker's Compensation Act (820 ILCS 305/1 *et seq.*).

¶ 5 In September 2003, plaintiff returned to work on restricted duty and remained on the City's payroll until June 14, 2006, after allegedly suffering an anxiety attack (2006 incident). Plaintiff then applied to the City for TTD benefits and was denied. Plaintiff, however, applied and was awarded ordinary disability benefits from the Fund for the 2006 incident, which it paid from July 6, 2006 through August 31, 2006. In addition, plaintiff took a medical leave of absence for personal disability from June 15, 2006 through September 14, 2006, and extended her leave of absence until May 7, 2007. In the interim, plaintiff requested that the Fund send her a new application for duty disability benefits, but the Fund accidentally sent her an application for ordinary disability benefits. Thus, on April 25, 2007, the Fund resent her the correct

application. Thereafter, plaintiff failed to extend her medical leave, and as a result, the City considered her employment terminated as of May 8, 2007. Subsequently, on May 16, 2007, plaintiff applied to the Fund for additional duty disability benefits stemming from the July 1999 incident. In 2009, the Board agreed to pay plaintiff duty disability benefits from the period February 2007 through May 2007.

¶ 6 On April 19, 2013, plaintiff requested that the Board rescind the Fund's termination of her duty disability benefits as of May 8, 2007. After a hearing, the Board denied plaintiff's request because plaintiff failed to establish that she was an employee at the time she filed her May 17, 2007 application as required by section 8-160 of the Code (40 ILCS 5/8-160) (West 2014)), and in light of the supreme court's decision *Di Falco v. Wood Dale Fireman's Pension Fund*, 122 Ill. 2d 22 (1988). Plaintiff then filed a petition for administrative review with the circuit court. After briefing and oral argument, the circuit court denied plaintiff's request noting that plaintiff submitted her application for duty disability's benefits after she was no longer a City employee. Plaintiff then filed this timely appeal.

¶ 7 ANALYSIS

¶ 8 In an appeal from the judgment of an administrative review proceeding, we review the decision of the administrative agency, not the decision of the circuit court. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009). The applicable standard of review depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Kazmi v. Department of Financial and Professional Regulation*, 2014 IL App (1st) 130959, ¶ 18. When a purely legal issue is raised, we review *de novo*. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 525 (2008). When the issue raised is one of fact, we will only ascertain whether such findings of fact are against the manifest weight of the evidence.

Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 386-87 (2010). In turn, when the issue raised presents a mixed question of law and fact, it is reviewed under the clearly erroneous standard. *Parikh v. Division of Professional Regulation of Department of Financial and Professional Regulation*, 2014 IL App (1st) 123319, ¶ 30. The clearly erroneous standard of review lies between the manifest weight of the evidence standard and the *de novo* standard, and lends some deference to the agency's decision. *Dow Chemical Co. v. Department of Revenue*, 359 Ill. App. 3d 1, 22 (2005). The Board's decision will be deemed clearly erroneous only where, upon review of the entire record, we are "left with the definite and firm conviction that a mistake has been committed." *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001).

¶ 9 We must first construe the applicable statutes in order to determine whether the Board erred in its determination that plaintiff's application for duty disability benefits was untimely. A reviewing court's primary objective in performing statutory construction is to give effect to the legislature's intent. *In re Application of the County Treasurer & ex officio County Collector*, 2013 IL App (1st) 130103, ¶ 9. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Id.* Reviewing courts should consider a statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it, and avoiding constructions that would render any term meaningless or superfluous. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006). Furthermore, reviewing courts have a duty to construe a statute in a manner that upholds its validity and constitutionality. *Id.*

¶ 10 Under section 8-160 of the Code, in pertinent part, "[a]n employee who becomes disabled *** in the performance of duty shall receive duty disability benefit, during any period of such disability for which he receives no salary." 40 ILCS 5/8-160 (West 2014) (emphasis added).

Further, under section 8-113 of the Code, an employee is defined as "[a]ny employee of an employer employed in the classified civil service *** or in the case of a city operating under a personnel ordinance, any employee of an employer employed in the classified or career service under the provisions of a personnel ordinance." 40 ILCS 5/8-113 (West 2014). In addition, section 8-162 of the Code acknowledges that "[w]hen the disability ceases, the Board shall discontinue payment of benefit and the employee *shall return to active duty*." 40 ILCS 5/8-162 (West 2014) (emphasis added).

¶ 11 Based on the plain language of the above statutes, the legislature clearly intended that only individuals who were municipal employees would be entitled to duty disability benefits while they received no salary, and then, return to active duty once the disability resolved. Further, the City's medical leave of absence policy requires that an employee return to work *or* request an extension of leave upon the expiration of the leave period. Here, since plaintiff failed to return to work or extend her medical leave past May 7, 2007, this effectively terminated her employment, making her May 16, 2007 application untimely. Although plaintiff tries to blame her tardiness on the Fund for initially sending her the wrong ordinary disability application, the Fund corrected its mistake and sent her the correct duty disability application on April 25, 2007, giving plaintiff ample time to file her application (or extend her medical leave) before the City terminated her employment. Furthermore, plaintiff fails to provide us with a cohesive legal argument, including mandatory or persuasive authority, as to why her May 16, 2007 duty disability benefit application should relate back to the date of her initial 1999 application. See Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) ("shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). Likewise, plaintiff fails to develop her argument and cite to relevant authority for

her contention that termination of employment does not terminate benefits under section 8-163 of the Code. See *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 ("[f]ailure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue"). Thus, we need not consider these contentions further. We note that the record suggests the Fund reinstated plaintiff's duty disability benefits for February 7, 2007 through May 8, 2007 because during this period plaintiff was technically a City employee on sanctioned medical leave.

¶ 12 Relevant case law also supports the Board's determination. In *Di Falco*, our supreme court affirmed the ruling of the board which dismissed a firefighter's application for pension benefits as untimely where the plaintiff filed the application one year after his discharge from the fire department. *Di Falco*, 122 Ill. 2d at 33. The court reasoned that

"the primary purpose of the establishment of a duty-related disability pension *** is to provide for the benefit of fire fighters who would still be employed as fire fighters and receiving a salary if not for the disability. Discharged fire fighters are no longer fire fighters because of the discharge, not the disability. To allow fire fighters who have been discharged to apply for disability pensions *** would disrupt the pension scheme established by the legislature." *Id.* at 30.

Therefore, since plaintiff is no longer a City employee, she is not entitled to collect duty disability benefits which were designed to assist current City employees who are unable to work and collect a salary. See *Eschbach v. McHenry Police Pension Board*, 2012 IL App (2d) 111179, ¶ 22 (the reviewing court concluded "the Board's determination that plaintiff had no right to a nonduty disability pension because she applied for that pension when she was no longer employed as a police officer was not clearly erroneous"); *Freberg v. Board of Trustees of*

the Firemen's Pension Fund, 128 Ill. App. 2d 369, 375 (1970) (a police officer or firefighter has no right to disability benefits unless he or she applies for those benefits while still employed); *Cf. Iwanski v. Streamwood Police Pension Board*, 232 Ill. App. 3d 180, 191 (1992) (officer's discharge would not preclude his entitlement to disability pension benefits because he applied for disability benefits before his discharge); *Greenan v. Board of Trustees of the Police Pension Fund of Springfield*, 213 Ill. App. 3d 179, 187 (1991) (the reviewing court found that a disabled police officer's resignation did not sever his right to a line of duty disability pension where he was a commissioned police officer at the time of his knee injury, at the time of his application for disability pension benefits and at the time of the hearings on his application). Accordingly, plaintiff fails to establish that the Board erroneously denied plaintiff duty disability benefits. See *Marconi v. Chicago Heights Police Pension Board*, 225 Ill.2d 497, 532-33 (2006) (the plaintiff in an administrative proceeding bears the burden of proof).

¶ 13

CONCLUSION

¶ 14 Based on the foregoing, we affirm the judgment of the Retirement Board of the Municipal Employees', Officers', and Officials' Annuity and Benefits Fund of Chicago.

¶ 15 Affirmed.