

2026 IL App (1st) 252694-U
Order filed: September 30, 2026

FIRST DISTRICT
THIRD DIVISION

No. 1-25-2694

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THIRTEEN RF, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 25 CH 4650
	)	
ILLINOIS DEPARTMENT OF	)	Honorable
EMPLOYMENT SECURITY,	)	John A. Simon
	)	Judge, presiding.
Defendants-Appellees.	)	

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Martin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed the employer's complaint seeking administrative review where it failed to exhaust its administrative remedies.

¶ 2 Plaintiff, Thirteen RF, Inc., (Thirteen) appeals from an order of the circuit court granting the motion of defendant-appellee, the Department of Employment Security (Department), to dismiss its complaint for administrative review of the recommended decision issued by an administrative law judge, acting as the representative of the Director of the Department, for failure

to exhaust its administrative remedies under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2024)). We affirm.

¶ 3 Thirteen is an Illinois company, operating as an S corporation, that provides back-office support and architectural services. Thirteen acquires various types of trucks and construction equipment and provides fabrication services to customize the equipment. It also operates a rental business for construction equipment. Thirteen has employees that work as fabricators, shop laborers and mechanics, accounting and administrative personnel, and managers.

¶ 4 As the result of an audit conducted in 2022, the Director of the Department issued a determination and assessment, pursuant to section 2200 of the Unemployment Insurance Act (Act) (820 ILCS 405/2200 (West 2022)), finding that Thirteen had failed to make required unemployment insurance contributions with respect to five individuals, four that provided cleaning services and one that installed GPS devices and strobe lights on some vehicles.

¶ 5 Thirteen filed a timely protest of the determination and assessment and petition for hearing. In its protest, Thirteen argued that the five individuals were independent contractors and therefore excluded from “employment” under section 212 of the Act (*id.* § 212). An administrative hearing, conducted by an administrative law judge, acting as the Director’s representative, was held in January 2022. Thirteen’s Chief Financial Officer appeared and testified on behalf of Thirteen.

¶ 6 On March 4, 2025, the administrative law judge issued a recommended decision finding that Thirteen established that the services of four of the five individuals were excluded from “employment” and that it had underpaid its required contributions for only one individual. The administrative law judge further found that Thirteen met its burden of proof under section 2200 of the Act (*id.* § 2200) that the determination and assessment was incorrect and modified the determination and assessment.

¶ 7 The recommended decision, in relevant part, further stated:

“Take notice that this Recommended Decision shall, without further notice, become the final decision of the Director of Employment Security, in accordance with the rule at 56 Ill. Adm. Code 2725.270 unless objections are filed to the Recommended Decision in accordance with the rule at 56 Ill. Adm. Code 2725.275.

Objections must be filed within 20 days after the date of this Recommended Decision, the date of mailing, unless a request for a one-time 10-day extension is filed in writing within 10 days of the date of this Recommended Decision.”

Section 2725.270(d) of title 56 of the Illinois Administrative Code (Code) provides that “[t]he recommended decision shall become the decision of the Director unless objections are filed to the recommended decision in accordance with Section 2725.275.” 56 Ill. Adm. Code § 2725.270(d) (eff. May 14, 2019). Section 2725.275 of the Code provides that “[a]ny party shall have the right to file objections to a recommended decision within 20 days after the service of the recommended decision” and that an employer may request an extension, “within 10 days after service of the recommended decision.” *Id.* § 2725.275(a), (e).

¶ 8 On the same day as the recommended decision was issued, March 4, the Department deposited the recommended decision in the mail sending it by certified mail to Thirteen’s business address, a post office box in Murphysboro, Illinois. The U.S. Postal Service (USPS) delivered the recommended decision on Friday, March 21, 2025, at 11:56 a.m. and the recommended decision was picked up from the post office box about an hour later.

¶ 9 Thirteen did not file any objections to the recommended decision.

¶ 10 On April 25, 2025, Thirteen filed a complaint for administrative review in the circuit court, alleging that the recommended decision was erroneous. The complaint alleged that the

recommended decision was a final administrative decision and that its appeal was timely, where it was filed within 35 days of March 24, the date on which Thirteen received copies of the recommended decision.

¶ 11 The Department moved to dismiss the complaint under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2024)) for failure to exhaust administrative remedies. The Department argued that Thirteen failed to file objections within 20 days of the date of service under section 2725.275(a) of the Code (56 Ill. Admin. Code § 2725.275(a) (eff. May 14, 2019)) and therefore was not entitled to judicial review under section 3-102 of the Illinois Administrative Review Law (735 ILCS 5/3-102 (West 2024)). Thirteen responded arguing, *inter alia*, that it was not provided a meaningful opportunity to exhaust its administrative remedies, where it only had three and a half days to file objections, and was therefore deprived of due process.

¶ 12 The circuit court granted the Department's motion to dismiss.

¶ 13 Thirteen appealed.

¶ 14 On appeal, Thirteen argues that the circuit court erred in granting the Department's motion to dismiss for failure to exhaust administrative remedies.

¶ 15 When a party moves to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2024)), that party admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter which defeats the plaintiff's claim. *Twyman v. Department of Employment Security*, 2017 IL App (1st) 162367, ¶ 20. Here, the Department moved to dismiss under subsection 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2024)) arguing that Thirteen failed to exhaust its administrative remedies where it failed to file objections to the recommended decision. Our review of a section 2-619 dismissal is *de novo*. *Twyman*, 2017 IL App (1st) 162367, ¶ 30.

¶ 16 The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2024)) governs all administrative reviews taken from decisions of the state agencies which expressly adopt it as the means of review. Section 2205 of the Unemployment Insurance Act (820 ILCS 405/2205) (West 2024)) provides that courts may review final administrative decisions of the Director in accordance with the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2024)). *Carroll v. Department of Employment Security*, 389 Ill. App. 3d 404, 407-08 (2009). The procedures of the Administrative Review Law must be strictly followed. *Blessing Hospital v. Illinois Health Facilities & Services Review Board*, 2024 IL App (4th) 230282, ¶ 30. If those procedures are not followed, the circuit court lacks jurisdiction. *Id.* (quoting *Rodriguez v. Sheriff's Merit Commission*, 218 Ill. 2d 342, 350 (2006)).

¶ 17 The general rule is that parties aggrieved by the action of an administrative agency cannot seek review in the courts without first exhausting all administrative remedies available to them. *Castaneda v. Human Rights Comm'n*, 132 Ill.2d 304, 308 (1989). Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the cause before it, use its expertise to resolve matters, correct its own errors, and conserve judicial time by avoiding unnecessary or piecemeal appeals. *Id.*

¶ 18 Section 3-102 of the Administrative Review Law limits judicial review to “a final decision of any administrative agency.” 735 ILCS 5/3-102 (West 2024). It further provides, in relevant part:

“If under the terms of the Act governing the procedure before an administrative agency an administrative decision has become final because of the failure to file any document in the nature of objections, protests, petition for hearing or application for administrative review within the time allowed by such Act, such decision shall not be subject to judicial review

hereunder excepting only for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.” *Id.*

¶ 19 Under section 2725.275(a) of the Code, Thirteen had 20 days from the date of service of the recommended decision to file objections. 56 Ill. Adm. Code § 2725.275(a) (eff. May 14, 2019). Section 2203 of the Act provides that “notice shall be deemed to have been served when deposited” in U.S. mail. 820 ILCS 405/2203 (West 2024). Here, Thirteen was deemed served on March 4, 2025, when the recommended decision was deposited in the U.S. mail. Therefore, Thirteen had until Monday, March 24, 2025, to file objections to the recommended decision.

¶ 20 Thirteen does not dispute that it did not file objections but argues that it was excused from the exhaustion requirement.

¶ 21 The courts of this state have recognized several exceptions that allow a party to seek judicial review of an administrative decision without exhausting all administrative remedies. The six exceptions are: (1) where a statute, ordinance or rule is attacked as facially unconstitutional; (2) where multiple administrative remedies exist and at least one is exhausted; (3) where the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency; (4) where no issues of fact are presented or agency expertise is not involved; (5) where irreparable harm will result from further pursuit of administrative remedies; or (6) where the agency’s jurisdiction is attacked because it is not authorized by statute. *Castaneda*, 132 Ill.2d at 309.

¶ 22 Thirteen, citing *Grimm v. Calica*, 2017 IL 120105, ¶ 24, argues that it is excused from the exhaustion of administrative remedies where its due process rights were impaired. Thirteen believes that an impairment of due process falls within the exception that “the agency cannot provide an adequate remedy.” Specifically, Thirteen argues that it did not have meaningful notice

and opportunity to respond where it received the recommended decision with only three days, which included only one and half business days, to file objections to the recommended decision.

¶ 23 However, *Grimm* did not address exceptions to the exhaustion of administrative remedies doctrine. *Id.* Instead, the plaintiff, in *Grimm*, exhausted its administrative remedies but filed an untimely complaint in the circuit court seeking judicial review of a final administrative decision. *Id.* ¶¶ 24-28. Our supreme court excused the untimely complaint finding that the agency’s final decision was “misleading” as to the time to seek judicial review. *Id.* ¶ 27. Thus, *Grimm* does not support Thirteen’s argument that it is excused from exhausting its administrative remedies.

¶ 24 Even if we agree with Thirteen that an impairment of due process is an exception to the exhaustion doctrine, we find that it has failed to show that it was denied due process.

¶ 25 The federal and Illinois Constitutions protect persons from state governmental deprivations of life, liberty, or property without due process of law. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. “Due process is a flexible concept, whose requirements depend on the government action at issue and the private interest implicated by that action.” *Grimm*, 2017 IL 120105, ¶ 21. In general, however, “[d]ue process entails an orderly proceeding wherein a person is served with notice, and has an opportunity to be heard and to present his or her objections at a meaningful time and in a meaningful manner, in a hearing appropriate to the nature of the case.” *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31. “The procedural safeguards mandated by due process in a particular case vary, depending upon: (1) the significance of the private interest which will be affected by the official action, (2) the risk of the erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards, and (3) the significance of the State interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural safeguards would entail.”
Stratton v. Wenona Community Unit Dist. No. 1, 133 Ill.2d 413, 433 (1990).

¶ 26 Here, Thirteen had a special interest in the financial burden of the recommended decision issued. The Department followed its procedures and sent Thirteen the recommended decision by certified mail on the same date that it issued its decision. However, due to no fault of the Department, the recommended decision arrived on a Friday when the objections were due on Monday, giving Thirteen three and a half days to file objections. On appeal, Thirteen has not shown that it did not have sufficient time to prepare and file objections. It provides no meaningful explanation for why it was not able to file objections within those three days. The record, instead, shows that Thirteen possessed a high degree of acumen in advocating against the Department and following procedures.

¶ 27 After the Department’s audit resulted in an adverse determination and assessment, Thirteen timely filed a protest and request for hearing. It then represented itself at the hearing where it persuaded the administrative law judge, acting as the Director’s representative, that its assessment and determination was incorrect on four out of five of the individuals at issue. In representing itself, it argued substantial legal matters including the definition of “employment” and the difference between an employee and an independent contractor. Although the recommended decision arrived with only three and a half days to file its objections, Thirteen was well acquainted with the facts and the issues after preparing a protest and actively participating at the hearing. Thirteen only had to respond to a narrow portion of the recommended decision relating to the single individual which remained at issue. Thirteen has failed to show it did not receive meaningful notice and that it did not have a meaningful opportunity to be heard where it had three and a half days to prepare and file objections to the recommended decision after a full hearing before the

administrative law judge. See *Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d 413, 433-434 (1990) (two days notice to prepare for an expulsion hearing did not violate due process where the parents were aware of the facts which led to their child's expulsion from school); *Gutierrez v. Board of Review*, 35 Ill. App. 3d 186, 190-91 (1975) (nine days after mailing or seven days after personal service in which to appeal an adverse decision did not violate due process).

¶ 28 We conclude that Thirteen has failed to exhaust all administrative remedies prior to seeking judicial review and we affirm the decision of the circuit court.

¶ 29 For the reasons stated, we affirm.

¶ 30 Affirmed.