

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

In the matter of an Appeal from the Decision of the President

By: The Appellant to the Appeals Committee

Heard: December 1, 2015

The Appellant brings this appeal from the decision of the President's Designate dated July 10, 2015. The appeal is made pursuant to Section 41 of the OMERS Primary Pension Plan (the "Plan").

By this appeal, the Appellant seeks a determination from the Appeals Committee permitting him to (1) terminate his Plan membership and (2) withdraw his contributions made to date. His employment continues with the [Employer]. His request was made on the basis that he did not know that he could not opt out of the Plan at the time he joined, and he is suffering financial hardship and would like an exemption based on humanitarian grounds.

This appeal was a hearing *de novo*, conducted by written submissions before a three-member Panel of the Appeals Committee. The Panel has considered all the evidence and written submissions of the Appellant as well as the evidence and submissions considered by the President's Designate.

Factual Background

The Appellant is an employee of [Employer]. His employment is designated as Other-Than-Continuous-Full Time. His initial enrollment in the Plan was voluntary.

The Appellant first enrolled in the Plan in 2008, however, he was able to opt out sometime later that same year. Apparently, this was because the employer indicated to OMERS that the Appellant had been enrolled in error. The Appellant says on this appeal that he had been permitted to join the Plan and opt out of the Plan before, and so believed he could do it again.

The Appellant voluntarily enrolled in the Plan in July 2013. In October of 2014 the Appellant requested that he be allowed to terminate his Plan membership and withdraw his contributions although his employment continues with [Employer]. He was advised by OMERS staff that the terms of the Plan did not permit him to terminate his Plan membership while he remained employed, and that the *Pension Benefits Act (PBA)*, R.S.O. 1990, c P.8 did not permit the refund of his contributions while he was still employed. He was advised that reversal of voluntary enrollments is only possible when there has been an administrative error that is identified in a timely fashion. OMERS staff indicated to the Appellant that it had confirmed its understanding of the rules with the Financial Services Commission of Ontario.

The Appellant asked for a determination by the President. The President's Designate advised the Appellant that he recognized the Appellant was in a difficult financial situation. However, OMERS could not legally allow the Appellant to terminate his membership in the Plan and withdraw his funds while he was still employed by [Employer]. To allow the Appellant to do so would place the Plan in the position of acting illegally, with significant consequences.

The Appellant appealed the President's Determination to this Panel.

The Appellant's Position on Appeal

The Appellant does not point to any specific provision in the Plan or the PBA that would allow him to opt out of the Plan and/or be refunded his contributions. Rather, he states that no one ever explained to him that he could not opt out once he joined, that he had been able to join and opt out once before, and that if he had been told that he could not opt out he would not have joined the Plan in 2013. He also states he is suffering financial hardship, and that his continued registration in the Plan is unfair.

OMERS Staff's Position on Appeal

There is evidence that the Appellant was informed in writing prior to joining the Plan that once he elected to participate in OMERS he would be required to remain in the Plan for the duration of his employment.

OMERS staff do not contest the Appellant's claim of financial hardship, however, OMERS staff say there is no provision in the PBA or the Plan for allowing a deviation from the Plan terms because of the member's financial hardship.

Relevant Legislation and Plan Provisions

Although there are some provisions of the PBA that entitle members to terminate their membership in a pension plan, none of those apply to the Appellant.

Neither the PBA nor the terms of the Plan permit the Appellant to terminate his membership in the Plan while remaining employed. Further, neither the PBA nor the Plan allow the Appellant to obtain a refund of his contributions while remaining employed. Finally, neither the PBA nor the terms of the Plan give the Panel power to exempt the Appellant on the basis of financial hardship or general fairness concerns.

Decision and Reasons for Decision

Having carefully considered all of the evidence, the Panel finds that the Plan provisions are clear and do not permit the Appellant to terminate his membership in the Plan while he is still employed. Nor does the Plan permit a refund of the Appellant's contributions.

We do not have jurisdiction to grant “hardship” exemptions from the Plan’s clear terms. We do not have jurisdiction to determine whether the Appellant was misled or improperly informed about the Plan’s terms. Even if the Appellant’s evidence that he was misled is correct, this is not an issue the Panel can determine. We can only interpret and apply the Plan provisions.

The Appellant’s appeal from the President’s Determination is therefore denied.

DATED at Toronto this _____ day of _____, 2015.

Eugene Swimmer, Chair

David Tsubouchi, Member

Sheila Vandenberg, Member