

## ***Pomponio v. Workers' Compensation Appeal Tribunal***

### Decision Summary

Court	B.C. Supreme Court
Citation	Oral Reasons Courtenay S09037
Result	Judicial Review Dismissed
Judge	Mr. Justice Bracken
Date of Judgment	February 27, 2017
WCAT Decision(s) Reviewed	WCAT-2014-02119

#### **Keywords:**

*Judicial review – Patent unreasonableness – Section 256 of Workers Compensation Act – Reconsideration – Substantial and material new evidence – Section 23.1 of Workers Compensation Act – Period of payment for total or partial disability – Whether evidence of circumstances after injury substantial and material to duration of compensation for disability*

#### **Summary:**

The worker challenged a decision of the Workers' Compensation Appeal Tribunal (WCAT) which had found that evidence of a worker's circumstances after a compensable injury is not substantial and material to the issue of when the worker's disability benefits should terminate. The Court held that WCAT's reasons were consistent with section 23.1 of the *Workers Compensation Act* and could not therefore be said to be patently unreasonable.

The worker was injured and permanently disabled at work when he was 60 years old. The Workers' Compensation Board had determined that his permanent partial disability benefits would terminate when the worker turned 65. The worker appealed this decision to WCAT. In a 2006 decision, WCAT determined that the worker's disability benefits would terminate upon his 70th birthday. The worker continued to work past his 70th birthday and, at age 72, applied to WCAT under section 256 of the *Workers Compensation Act* to reconsider its 2006 decision on the basis of new evidence. One of the requirements of an application under section 256 is that the new evidence be material and substantial to the original decision. In support of his application, the worker provided evidence of his current circumstances to the effect that he was still willing and able to work. WCAT held that because of section 23.1 of the *Act*, the issue before it in 2006 was whether before the time of the compensable injury the worker was

likely to have worked beyond the age of 65. On the reconsideration application, WCAT found that the evidence provided by the worker was not material to that issue because it addressed the worker's circumstances long after the injury happened.