

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**KYLER D EALY**

Claimant

and

**PRECISION UNDERGROUND**

Employer

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**HEARING NUMBER: 17BUI-00388**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-1, 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board adds the following discussion to the reasoning and conclusions of law.

The discussion of acquiescence in this case is limited to the issue of proving a change in the contract of hire. We do not apply acquiescence to a claim of detrimental working conditions. We concur with the Administrative Law Judge that the Claimant did not prove a change in the contract of hire in that the Employer never guaranteed no work below 15 degrees. Further, there can be no such term implied in the contract because the Claimant did work in such conditions in the past. Even assuming there was some

guarantee, and we do not so find, the Claimant would have acquiesced in the change as described by the Administrative Law Judge. On the issue of detrimental working conditions we concur with the Administrative Law Judge that such conditions were not proven.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv