



BRB No. 16-0645

TOM L. MAYS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HUNTINGTON INGALLS,)	DATE ISSUED: <u>Nov. 3, 2017</u>
INCORPORATED (AVONDALE)	
OPERATIONS))	
)	
Self-Insured)	ORDER on MOTIONS
Employer-Respondent)	for RECONSIDERATION

Claimant and employer have filed timely motions for reconsideration of the Board’s decision in this case, *Mays v. Huntington Ingalls, Inc.*, BRB No. 16-0645 (July 28, 2017). Each responds, urging the Board to reject the other’s arguments. We deny both motions for reconsideration. 33 U.S.C. §921(b)(5); 20 C.F.R. §§802.407, 802.409.

As to claimant’s motion for reconsideration, we reject the assertion that relative weights must be given to each of the borrowed employee factors. The “right to control” is the overriding factor, and all factors involving the right to control Gliott’s work in this case point to his not being employer’s borrowed employee. *Mays*, slip op. at 8-10; *see Melancon v. Amoco Production Co.*, 834 F.2d 1238, 1245 (5th Cir. 1988); *Fitzgerald v. Stevedoring Services of America*, 34 BRBS 202 (2001). Therefore, the Board properly affirmed the administrative law judge’s finding that claimant did not establish a mistake in fact as to the existence of a “third-party” settlement.

As to employer’s motion for reconsideration, only claimant’s motion for modification of the prior order denying disability compensation was before the administrative law judge. The administrative law judge denied claimant’s motion as without merit, in part, because granting modification of the prior award would result in claimant’s forfeiture of his medical benefits. Decision and Order on Modif. at 10; *see also* Tr. at 20.¹ Upon denying claimant’s motion for modification on this issue the prior award of medical benefits remains in effect because that decision was not modified.

¹ At the hearing, employer’s counsel recognized that one of the potential outcomes would be that claimant has not proven his entitlement on modification and that the previous decisions remain in effect.

See generally A.S. [Schweiger] v. Advanced American Diving, 43 BRBS 49 (2009) (McGranery, J., dissenting).

Accordingly, claimant's and employer's motions for reconsideration are denied. The Board's decision is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge