



**Issue Date: 14 September 2011**

**OALJ No.:** 2011-PSI-00002  
**OSHA No.:** 8-0370-10-007

*In the Matter of*

**MICHAEL KLINK,**

*Complainant*

v.

**BECHTEL OIL, GAS & CHEMICALS,**

*Respondent.*

**ORDER DENYING REQUEST FOR HEARING  
AND DISMISSING APPEAL**

This matter arises under the employee protection provision of the Pipeline Safety Improvement Act of 2002 (PSIA or the Act), 49 U.S.C. § 60129. On June 14, 2011, the Office of Administrative Law Judges (OALJ) received a filing from the Complainant entitled “Appeal of Constructive Denial by Assistant Secretary of Labor of Whistleblower Complaint of Michael Klink in *Bechtel Oil, Gas & Chemicals, Inc./Klink/8-0370-10-007*.” The filing averred that based on information received from the Denver Regional Office of the Occupational Safety and Health Administration (OSHA), it appeared that it would take more than three years after Mr. Klink’s complaint was filed for OSHA to complete its investigation and render a decision in Complainant’s case. Mr. Klink therefore sought a hearing before an administrative law judge on the theory of constructive denial of his complaint by OSHA. OALJ docketed the matter for the limited purpose of determining whether OALJ has authority to provide the relief requested.

Complainant and the Respondent have filed briefs on the issue of whether OALJ has the authority to take jurisdiction over a matter based on a theory of constructive denial.

Complainant argues that, at some point, delay at the investigatory stage becomes a constructive denial of the complaint, and the delay in his case has reached that point. He thus argues that OALJ should assume jurisdiction of the case and provide him with the opportunity for a de novo hearing on the issues raised in his complaint.

The Secretary opposes the relief sought by Mr. Klink based on information received from OSHA's Denver Regional Office that it has begun investigating the complaint in this matter, and the investigation will be completed by approximately November or December 2011. Citing *Surguladze v. UBS Investment Bank*, 2009-SOX-54 (ALJ July 20, 2009) and *Love v. United States Environmental Protection Agency*, 2008-CAA-5 (Aug. 27, 2008), the Secretary argues that relevant statutory and regulatory schemes clearly contemplate an investigation and determination by OSHA before a whistleblower complainant is entitled to a hearing before OALJ, a judicial finding of constructive denial is an extraordinary procedure, and caution must be exercised in granting such relief.

I agree with the Secretary. Assuming *arguendo* that the principle of constructive denial is a valid basis for OALJ to take jurisdiction over a whistleblower complaint, I decline to invoke that extraordinary remedy in this case. The Secretary has represented that the investigation into Mr. Klink's complaint is proceeding and a decision will be forthcoming in the near future.

Based on the foregoing, the Complainant's request for a hearing prior to OSHA's completion of its investigation and issuance of written findings under 49 U.S.C. § 60129 in this matter is **DENIED** and his appeal is **DISMISSED**.

**SO ORDERED.**

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**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

Washington, DC