

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 98196 / August 22, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-76

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by claimant Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

I. Background

A. The Covered Action

On Redacted the Commission filed an action against Redacted (the “Company”) and *** individuals: Redacted and Claimant (collectively, the “Defendants”), charging Defendants with violations of the federal securities laws for Redacted All of the Defendants, including Claimant, were charged with Redacted

Redacted Each Defendant, including Claimant, consented to a final judgment enjoining each Defendant, including Claimant, from violating the securities laws. In total, Defendants were ordered to pay approximately Redacted in disgorgement, Redacted in prejudgment interest, and Redacted in civil penalties. Of that, Claimant was

ordered to pay ^{Redacted} in disgorgement, ^{Redacted} in prejudgment in interest, and a ^{Redacted} civil penalty.

On ^{Redacted} the Office of the Whistleblower (“OWB”) posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Claimant’s claim be denied because the submission upon which Claimant based his/her claim for award was not made voluntarily as required by Exchange Act Section 21F and Rules 21F-3 and 21F-4(a)(1) because Claimant made the submission after a request, inquiry, or demand that relates to the subject matter of Claimant’s submission was directed to Claimant by the Commission. The CRS further noted that Commission staff directed a subpoena to Claimant as an officer of the Company, followed by a subpoena requesting identical materials directed to Claimant at his/her home residence. Approximately four weeks later, Claimant provided his/her tip to the Commission at the same time Claimant responded to the subpoenas. The CRS preliminarily determined that Claimant’s information related to the same subject matter as the information called for in the subpoena.

Finally, the CRS stated that because Claimant’s submission was not made voluntarily, the CRS would not separately analyze whether Claimant is also excluded from award eligibility under Rule 21F-16.¹

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determinations.² Claimant principally argues that the Covered Action involved ^{Redacted} and requests that OWB “view these as two separate situations and give [Claimant] a whistleblower award for information ^{***} provided to the Staff relating to the [misconduct], which [Claimant] had no involvement with and was a victim of.” Claimant argues that Claimant’s culpability did not relate to any misconduct involving ^{Redacted} (the “First Misconduct”) perpetrated by ^{Redacted} other individual Defendants, but only to misconduct involving ^{***} ^{Redacted} (the “Second Misconduct”).

Claimant also contends that Claimant contacted his/her attorney on ^{Redacted} eleven days before Claimant received a subpoena from the Commission. Claimant stated that Claimant was a victim of a scam, and that Claimant “would have pursued this [whistleblower] report years earlier, but [Claimant’s] report was delayed because ^{Redacted} repeatedly promised [Claimant] that [Claimant’s] money would be returned [Claimant’s] view at the time was that the [Second Misconduct was] all part of an effort to perpetrate the

¹ Rule 21F-16 concerns whistleblowers who engage in culpable conduct. *See* 17 C.F.R. § 240.21F-16.

² *See* Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

[First Misconduct].” Claimant also states that the Commission’s subpoena related to the Second Misconduct, not to the First Misconduct.

Lastly, Claimant contends that Claimant’s submission was the first report the Commission received relating to the First Misconduct, and that report “led to the successful prosecution” of ^{Redacted} Defendants.

II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.³ Under Exchange Act Rule 21F-4(a), a submission to the Commission is considered “voluntary” if, as relevant here, it is provided “before a request, inquiry, or demand that relates to the subject matter of [the] submission” is directed to the claimant or the claimant’s representative “[b]y the Commission” or in “connection with an investigation by . . . any other authority of the federal government.”⁴ If the Commission directs a request, inquiry, or demand to a claimant or his/her representative before the claimant makes a submission, “[the claimant’s] submission will not be considered voluntary, and [the claimant] will not be eligible for an award.”⁵ The purpose of the rule is to “creat[e] a strong incentive for whistleblowers to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators ‘come knocking on the door.’”⁶ Rule 21F-4(a)(1) establishes a “simple and straightforward test for when we will treat a whistleblower as having submitted information voluntarily; as relevant here, the whistleblower must provide his or her tip to the Commission before investigators direct a ‘request, inquiry, or demand’ to the whistleblower that relates to the subject matter of the tip.”⁷ However, a claimant’s submission also will be considered voluntary if the claimant “voluntarily provided the same information to one of the other authorities identified above [in Rule 21F-4(a)(1)],” such as Congress, other authorities of the federal government, or a state attorney general or securities regulatory authority, “prior to receiving a request, inquiry, or demand from the Commission.”⁸

Claimant does not qualify for a whistleblower award in this matter because Claimant does not meet the voluntary submission requirement of Rule 21F-4(a). Enforcement staff issued two subpoenas to Claimant, both of which contained identical requests for production of

³ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁴ Exchange Act Rule 21F-4(a)(1)(i), 17 C.F.R. § 240.21F-4(a)(1)(i).

⁵ Exchange Act Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2).

⁶ Proposing Release for Whistleblower Rules, 75 Fed. Reg. 70488, 70,490 (Nov. 17, 2010); *see also* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34,307 (June 13, 2011) (stating that a “whistleblower award should not be available to an individual who makes a submission after first being questioned about a matter (or otherwise requested to provide information) by the Commission staff acting pursuant to any of [its] investigative or regulatory authorities”).

⁷ Order Determining Whistleblower Award Claim, Exchange Act Release No. 84046 at 8 (Sept. 6, 2018).

⁸ Exchange Act Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2).

documents. The record shows that both subpoenas requested documents relating to the First Misconduct as well as requests relating to the Second Misconduct. Claimant responded to the subpoenas approximately four weeks later and submitted a TCR at the same time. As stated in Claimant's response to the Preliminary Determination, the First Misconduct "is the subject of [Claimant's] whistleblower tip." Enforcement staff confirmed, in a supplemental declaration, that the subpoenas requested documents relating to the First Misconduct and Claimant's response to the subpoenas also related to the First Misconduct. Accordingly, because Claimant did not submit his/her tip before the Commission issued subpoenas to Claimant relating to the subject matter of Claimant's tip, Claimant's submission is not voluntary.

We are not persuaded by Claimant's argument that "the subpoena[s] related to the [Second Misconduct], not to the [First Misconduct]," and that Claimant should receive an award based upon the information Claimant provided relating to the First Misconduct. As confirmed by staff in a supplemental declaration, which we credit, the subpoenas requested materials relating to both the First Misconduct and the Second Misconduct, and in response Claimant provided materials related to both. Because Claimant did not provide those materials until after Claimant received the subpoenas from the Commission, and Claimant's tip related to the subject matter of the Commission's subpoenas, Claimant's submission cannot be considered voluntary pursuant to Rule 21F-4.⁹

Accordingly, Claimant is not eligible for a whistleblower award.¹⁰

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection with the Covered Action be, and they hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

⁹ To the extent that Claimant argues that his/her submission is voluntary because Claimant contacted his/her counsel regarding a whistleblower submission before Claimant received the subpoenas, we disagree. Exchange Act Rule 21F-4(a) requires an actual submission of information to the Commission or the other identified authorities to determine whether that submission is voluntary. Claimant did not submit his/her tip to the Commission or any other identified authorities until approximately four weeks after receiving the subpoenas.

¹⁰ Claimant also notes in his/her response to the Preliminary Determination that Claimant's submission "led to the successful prosecution" of ^{Redacted} However, Claimant's argument is not relevant here. The CRS's Preliminary Determination did not make any recommendation on this issue, and because Claimant did not submit his/her information voluntarily, Claimant is not eligible for an award on that ground alone. Further, while Claimant notes that "[Claimant]'s culpability is only in relation to the [Second Misconduct]," Claimant's culpability was not analyzed by the CRS and was not a ground for the CRS's preliminary denial recommendation. As such, we do not analyze this issue here and it is likewise not a basis for our denial.