

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 98340 / September 11, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-83

In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Office of the Whistleblower issued a Proposed Final Summary Disposition (“PFSD”) recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant 2”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 2 filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant 2’s award claim is denied.¹

I. Background

A. The Covered Action

Redacted, the Commission filed settled charges against Redacted
*** Redacted (“Respondent”) for Redacted

As described in the Commission’s order, Redacted
Redacted
Redacted
Redacted

¹ OWB also preliminarily denied the award claim of Claimant 1. The claimant did not seek reconsideration of the Preliminary Summary Disposition, and therefore the denial of his/her claim was deemed to be the Final Order of the Commission under Exchange Act Rule 21F-18(b)(4).

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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 2 filed a timely whistleblower award claim.

B. The Preliminary Summary Disposition

OWB preliminarily determined that Claimant 2 was not eligible for an award because the information he/she provided did not lead to the success of an enforcement action. Specifically, OWB noted that Division of Enforcement staff (“Enforcement staff”) responsible for the Covered Action never received or reviewed Claimant 2’s tips. Additionally, Enforcement staff responsible for the Covered Action did not have any communications with Claimant 2 before or during the investigation. In Claimant 2’s whistleblower award application, Claimant 2 stated that he/she provided information to, and had communications with, two Enforcement staff (“Other Enforcement Staff”). As set out in the staff declaration in support of the recommended denial, while the Other Enforcement Staff spoke with Claimant 2, they spoke to him/her in connection with potentially new and separate investigations. Further, Enforcement Staff involved in the Covered Action did not receive Claimant 2’s information through the Other Enforcement Staff.

C. Claimant 2’s Response to the Preliminary Summary Disposition

Claimant 2 submitted a timely written response contesting the Preliminary Summary Disposition.²

In his/her request for reconsideration, Claimant 2 makes three primary arguments. First, he/she asks that the Commission consider how his/her information may have shaped the Commission’s investigations and enforcement actions “writ large.” He/She claims that in his/her TCRs and communications with the Other Enforcement Staff, Claimant 2 explained ^{Redacted}

Second, contrary to the Enforcement staff’s declaration, Claimant 2 asserts that he/she did provide information specific to the Respondent’s product at issue in the Covered Action in his/her TCRs and in his/her communications with the Other Enforcement Staff. Third, Claimant

² See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3).

2 identifies *** “Associated Actions”³ that he/she believes he/she contributed to and asks that the Commission aggregate the *** Associated Actions for purposes of making him/her an award.

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.⁴ Additionally, and as relevant here, original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to “commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current examination or investigation” and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;⁵ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁶

In determining whether the information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.⁷ For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁸

As an initial matter, the record shows that Claimant 2’s information did not cause Enforcement staff to open the investigation. Enforcement staff confirms, in a sworn declaration, which we credit, that the Matter Under Inquiry that resulted in the Covered Action was opened in ^{Redacted} based on an initiative of Enforcement staff and not due to any information provided by Claimant 2, whose first tip to the Commission was submitted more than a year later in ^{Redacted}. Enforcement staff had identified the Respondent through its own analysis ^{***} ^{Redacted}. By the time Claimant 2 submitted his/her tip, the Covered Action investigation was already substantially advanced. As such, Claimant 2’s assertion that his/her information

³ In his/her request for reconsideration, Claimant 2 lists the following actions as “Associated Actions”: ^{Redacted}
^{Redacted}
^{Redacted}

^{Redacted} None of those actions exceeded the required \$1,000,000 threshold to post as a Notice of Covered Action (“NoCA”) pursuant to Rule 21F-10.

⁴ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁵ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁶ See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9 (same).

⁸ Exchange Act Rel. No. 85412 at 8-9.

somehow played a role in shaping the Covered Action investigation is not supported by the record.

The record also reflects that Claimant 2's information did not cause Enforcement staff to inquire into different conduct or significantly contribute to the ongoing investigation. Enforcement staff responsible for the Covered Action investigation affirmed in a declaration that they did not receive or review Claimant 2's information and that the Other Enforcement Staff with whom Claimant 2 communicated did not relay Claimant 2's information to them. Even if Claimant 2 provided information relating to the Respondent in his/her TCRs or in his/her communications with the Other Enforcement Staff the record reflects that such information was not passed on or used in any way in connection with this Covered Action.

Finally, we disagree with Claimant 2's contention that the Commission should treat the Associated Actions as a single Commission action for purposes of making an award to Claimant 2 and consider his/her contributions to the Associated Actions. Under Rule 21F-4(d)(1), while an "action" generally means a single captioned judicial or administrative proceeding brought by the Commission, the Commission may treat two or more administrative or judicial proceedings as a Commission action for purposes of an award if the proceedings arise out of the same nucleus of operative facts.⁹ While the Associated Actions involved similar misconduct related to the Covered Action, the time periods of the misconduct in each case were different and they each involve different actors. As a result, the Associated Actions do not arise from the same nucleus of operative facts and should not be aggregated together or with the Covered Action for purposes of making an award determination under Rule 21F-4(d)(1).

For these reasons, Claimant 2's information did not lead to the successful enforcement of the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant 2 in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

⁹ 17 C.F.R. § 240.21F-4(d)(1). Exchange Act Rule 21F-4(d)(1) provides that "the Commission will treat as a Commission action two or more administrative or judicial proceedings brought by the Commission if these proceedings arise out of the same nucleus of operative facts." In deciding whether two or more proceedings arise from the same nucleus of operative facts, the Commission considers a number of factors, including whether the separate proceedings involve the same or similar: (1) parties; (2) factual allegations; (3) alleged violations of the Federal securities laws; or (4) transactions or occurrences. *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34327 (June 13, 2011).