

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 86902 / September 9, 2019

WHISTLEBLOWER AWARD PROCEEDING

File No. 2019-10

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by ^{Redacted} (“Claimant”) in connection with the above-referenced 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

On ^{Redacted}, staff in the Commission’s Division of Enforcement (“Enforcement”) opened an investigation into ^{Redacted} (the “Company”) based on information received from a source other than Claimant—more specifically, from ^{Redacted}. ^{Redacted} Approximately six months later, on ^{Redacted} the Commission filed a civil injunctive action alleging that the Company and ^{Redacted} (collectively, “Defendants”), had violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder. ^{Redacted}

The Commission’s complaint alleged that from ^{Redacted} the Company ^{Redacted} ^{Redacted} the

Redacted
Redacted
Redacted
complaint, Defendants
Redacted
Redacted
Redacted
In reality, according to the
Redacted
The complaint also alleged that Defendants
Redacted
despite having received a
Redacted
letter from the Commission’s staff directing the Company not to
Redacted

On Redacted the Commission filed an amended complaint that named Redacted
Redacted and that repeated the allegation of Redacted without alleging any
additional instances of Redacted¹ The Court granted the Commission’s motion for
summary judgment against Defendants on liability and, on Redacted entered a final
judgment that ordered Defendants each to pay a \$ Redacted civil penalty and held them jointly
and severally liable for disgorgement of \$ Redacted of proceeds and \$ Redacted of
pre-judgment interest.

On Redacted the Office of the Whistleblower (“OWB”) posted Notice of Covered
Action Redacted for the Covered Action. Claimant filed a timely whistleblower award
application. In the application, Claimant self-identified as Redacted
and asserted that Claimant had provided information to Redacted
Redacted on Redacted Claimant further asserted, as grounds for an award: Redacted
Redacted
Redacted

II. Preliminary Determination and Response

A. Preliminary Determination

The CRS preliminarily determined to deny Claimant’s award claim because Claimant’s
information did not lead to the successful enforcement of the Covered Action within the meaning
of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. In
reaching this preliminary determination, the CRS considered, among other record evidence, a
declaration (“Declaration”) from an Enforcement staff member assigned to the investigation
 (“Staff”). In the Declaration, the Staff explained that Claimant had submitted a tip through the
Commission’s online portal on Redacted more than Redacted after the Commission
filed its initial complaint, and that Claimant also had spoken with the Staff by telephone just
once on Redacted In both the tip and the telephone call, according to the Declaration,

1 Redacted
Redacted

Redacted

Claimant alleged that a Company employee had ^{Redacted} after the Company had received the letter instructing it not to do so. Moreover, the Declaration explained, the Staff was previously aware of ^{Redacted} as alleged in the initial complaint, and was unable to corroborate Claimant's allegation with respect to ^{Redacted}. As a result, the allegation of ^{Redacted} remained unchanged in the Commission's amended complaint filed in ^{Redacted} and Claimant's information did not contribute in any way to either the investigation or the litigation of the Covered Action.

B. Response

After requesting and reviewing the record supporting the Preliminary Determination, Claimant submitted a timely written request for reconsideration. In the request, Claimant does not dispute that Claimant's tip was submitted ^{Redacted} after the Commission filed its action or that the Staff was already aware of ^{Redacted} by the Company, as alleged in the initial complaint. Rather, Claimant focuses on Claimant's asserted interactions with agents at the ^{Redacted}. Claimant contends that Claimant answered questions from agents at the ^{Redacted} and provided them with ^{Redacted} and used to support the case. Claimant contends that Claimant was told over the phone that ^{Redacted} while not "the smoking gun", was beneficial and helped support the case." In the response, Claimant does not identify any additional communications with the Staff; nor does Claimant attempt to explain how ^{Redacted} contributed to the Covered Action.

III. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.² For the reasons that follow, and based on our review of the entire record, including a supplemental declaration ("Supplemental Declaration") from the Staff, we find that Claimant's information did not lead to the success of the Covered Action.

Under the whistleblower rules, as relevant here, an individual's original information leads to the success of an action where it causes staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual's original information

² Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.³ In determining whether an individual’s information significantly contributed to an action, we consider factors such as whether the information allowed us to bring: the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.⁴ The individual’s information must have been “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.⁵

Claimant does not satisfy Rule 21F-4(c)(1) as the investigation that culminated in the Covered Action was opened in ^{Redacted} approximately ten months before Claimant submitted Claimant’s tip in ^{Redacted}

Claimant also does not satisfy Rule 21F-4(c)(2) as none of Claimant’s information was used in or contributed in any way to the Covered Action. Claimant submitted the tip approximately ^{Redacted} after the Commission filed its initial complaint in federal district court in ^{Redacted} ^{Redacted} Claimant does not dispute that the Staff was already aware of ^{Redacted} the Company, as alleged in the initial complaint, by the time Claimant submitted the tip or that the Commission’s allegation of ^{Redacted} remained unchanged in the amended complaint filed in ^{Redacted} Nor does Claimant’s response to the Preliminary Determination offer any reason to doubt the Staff’s Declaration that none of the information provided by Claimant to the Staff in the tip and subsequent telephone call contributed in any way to either the investigation or the litigation of the Covered Action.

³ 17 C.F.R. § 240.21F-4(c)(1)-(2).

⁴ *See Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300, 34,325 (June 13, 2011).

⁵ Order Determining Whistleblower Award Claim, Release No. 34-77833 (May 13, 2016). *See generally* Order Determining Whistleblower Award Claims, Release No. 34-85412 (Mar. 26, 2019), *pet. filed*, No. 19-11566 (11th Cir. Apr. 25, 2019).

As explained above, Claimant's response to the Preliminary Determination focuses on Claimant's asserted acts of answering questions from *** agents and providing Redacted to Redacted. But the Supplemental Declaration makes clear that the Staff did not participate in any meetings between Claimant and Redacted. Moreover, Staff confirmed that it: (a) does not know how, or even if, the Redacted were used by Redacted (b) did not receive any information from Redacted as to whether the Redacted as Claimant contends in Claimant's Response; and (c) did not receive any Redacted or any documents that had Redacted. In addition, the Supplemental Declaration makes clear that the Staff never told or otherwise implied to Claimant that the information Claimant asserted Redacted provided to Redacted helped support the Covered Action. The Staff further attested in the Supplemental Declaration that even if Claimant's asserted Redacted were beneficial to Redacted investigation or the resulting Redacted that information was not useful to and did not in any way contribute to either the investigation or litigation of the Covered Action. Claimant has offered no credible assertion or evidence to the contrary, and we therefore credit the Declaration and Supplemental Declaration.⁶

IV. Conclusion

Accordingly, it is ORDERED that Claimant's whistleblower award claim be, and hereby is, denied.

By the Commission.

Eduardo A. Aleman
Deputy Secretary

⁶ We do not read Claimant's submissions as making any whistleblower award claim with respect to Redacted.

In particular, Claimant's whistleblower award application on Form WB-APP fails to mention Redacted even though it did specify the name, docket number, and filing date of the Commission's civil enforcement action. Even if Claimant were to seek an award with respect to Redacted on the ground that it was a "related action," Claimant would face the obstacle that qualification for an award in the Commission's covered action is a prerequisite to qualification for an award in a "related action." See Exchange Act Section 21F(a)(5), 15 U.S.C. § 78u-6(a)(5) (defining a "related action" as based upon the same original information provided by the whistleblower that led to the successful enforcement of the Commission action); Exchange Act Rules 21F-3(b) & 11(a), 17 C.F.R. §§ 240.21F-3(b) & 240.21F-11(a); Order Determining Whistleblower Award Claim, Rel. No. 34-84503 at n.4 (Oct. 30, 2018) ("The Commission may make an award to a whistleblower in connection with a related action only if the Commission has determined that the whistleblower is entitled to an award for a Commission covered action.").