

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 88667 / April 16, 2020

WHISTLEBLOWER AWARD PROCEEDING

File No. 2020-14

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 that the claim submitted by *Redacted* (“Claimant”) in connection with the Notice of Covered Action (“Covered Action”) identified above be denied. Claimant subsequently filed a timely written response contesting the Preliminary Determination.

After careful consideration of the administrative record, including Claimant’s written response, we deny Claimant’s award claim.

I. Background

A. The Covered Action

On *Redacted* the Commission found that *Redacted* (“Company”) violated *Redacted*, *Redacted*, *Redacted*, *Redacted*, *Redacted*, *Redacted*

Redacted the Commission ordered the Company *Redacted* to pay a total of \$ *Redacted* consisting of disgorgement plus prejudgment interest and a civil

penalty. The Covered Action was posted on the Commission’s website on *Redacted* and in response Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

On *Redacted*, the CRS issued a Preliminary Determination¹ recommending that Claimant’s award claim be denied 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. Claimant’s information did not cause the Commission staff to open the investigation. Nor did Claimant’s information significantly contribute to the success of the Covered Action, as Enforcement staff responsible for the Covered Action never received Claimant’s tips, did not communicate with Claimant, and did not know who Claimant was.

In *Redacted*, Division of Enforcement (“Enforcement”) *Redacted* opened a Matter Under Inquiry into the Company, as a result of *Redacted* ^{***}
Redacted
Redacted
Redacted

On or about *Redacted*, Claimant sent the Commission tips alleging that *Redacted* (the “Firm”), was involved in “rampant illegal activity and FINRA and SEC rule violations and possible tax evasion.” Claimant’s tips were not routed to the *Redacted* investigation of the Company, but to a different Commission office.

Separately, on or about *Redacted*, *Redacted* Enforcement staff working on the investigation of the Company, without any knowledge of, or information from Claimant, sent a document request to the Firm. Enforcement staff understood that the Firm *Redacted* *Redacted* may have had information about the securities transactions *Redacted*. During the investigation of the Company, the involved *Redacted* Enforcement staff never received or were aware of Claimant’s two tips, and, were not aware of Claimant.² Furthermore, the *Redacted* Enforcement staff investigating the Company did not know *Redacted*

¹ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

² Claimant’s tips were assigned to another investigation in a different Commission office for review and potential follow-up action. The Commission staff on this other investigation *Redacted* to whom the Claimant’s tips were assigned, did not communicate or provide any information from or about Claimant or Claimant’s tips to the ^{***} Enforcement staff investigating the Company.

*** and had no communication with Claimant and did not receive any information from Claimant.

C. Claimant's Response to the Preliminary Determination

After requesting and receiving a copy of the record, Claimant submitted a timely written response contesting the Preliminary Determination.³ Claimant believes the information submitted by the Claimant was high quality and "should have or could have been used" in the investigation of the Company.

Claimant asks the Commission to reconsider an award based on the quality of the information that Claimant provided despite it not being used.

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 As relevant here, information leads to the success of a covered action if it: (1) causes the Commission staff to (i) open or reopen an investigation, or (ii) inquire into different conduct as part of a current Commission investigation;⁵ or (2) significantly contributes to the success of a Commission judicial or administrative enforcement action.⁶

We must look to whether the Claimant's information actually contributed to the success of the Covered Action, not whether "it should have or could have," as Claimant urges us to do.⁷ We find that the record conclusively shows that the information submitted by Claimant did not significantly contribute to the Covered Action. The information submitted by Claimant was not received by the Enforcement staff responsible for the investigation, and as such, could not have

³ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁴ See 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 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2). In determining whether information significantly contributed to an enforcement action, we consider factors such as "whether the information allowed us to bring: (1) Our successful action in significantly less time or with significantly fewer resources; (2) additional successful claims; or (3) successful claims against additional individuals or entities." *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011). "The individual's information must have been 'meaningful' in that it 'made a substantial and important contribution' to the success of the covered action." *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at *16 (Mar. 26, 2019); *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

⁷ See *Order Determining Whistleblower Award Claim*, Release No. 34-85412 (Mar. 26, 2019) (denying whistleblower award to claimant who argued that staff errors resulted in improper processing of submission, because information submitted did not actually lead to successful enforcement of covered action); *Order Determining Whistleblower Award Claim*, Release No. 34-79294 (Nov. 14, 2016) (same), *pet. rev. denied sub nom. Doe v. SEC*, 729 F. App'x 1 (D.C. Cir. 2018).

significantly contributed to the Covered Action.⁸ In particular, we credit the staff declarations in the administrative record, which demonstrate that the information submitted by Claimant did not cause the Commission staff to open the investigation that eventually resulted in the Covered Action, did not cause the staff to initiate a new line of inquiry or reopen an investigation that resulted in the Covered Action, and did not significantly contribute to the success of the Covered Action. The staff declarations demonstrate that Claimant's information was never reviewed or used by the Enforcement staff responsible for the Covered Action during the course of the investigation or as part of the Covered Action.

III. CONCLUSION

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

By the Commission.

Vanessa A. Countryman
Secretary

⁸ See Footnote 2.