UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92375 / July 12, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-70

In the Matter of the Claim for Award

Redacted

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"). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant's award claim is denied.

I. Background

On Redacted, the Commission filed a civil injunctive action against Redacted Redacted Redacted for *** participation in a fraudulent scheme to Redacted Redacted. On Redacted this enforcement action was settled with Redacted consenting to a judgment ordering *** to pay an amount under $1 million in monetary sanctions (the "Redacted Action"). The settlement with Redacted followed the Redacted issuance by the Commission of administrative orders brought against Redacted (the "Redacted Covered Action").

The Redacted Action and the Redacted Covered Action arose out of the same Commission investigation of Redacted. In Redacted, during the course of the investigation, Commission staff, along with staff of Redacted other agencies, interviewed Claimant by telephone. This interview was initiated when members of the investigative team approached Claimant's former employer about making Claimant available for an interview.[1] In Redacted, Claimant then submitted a Form TCR and, later, submitted additional information and

[1] Claimant participated in the interview without receiving a subpoena directing *** to testify.

documents to the Commission. Claimant's submissions related to the same subject matter as the information requested from Claimant during the Redacted interview.

On Redacted, the Commission's Office of the Whistleblower ("OWB") posted a Notice of Covered Action ("NoCA") on the Commission's public website for the Redacted Covered Action, inviting claimants to submit whistleblower award applications within 90 days.[2] OWB did not post a NoCA for the Redacted Action which, as noted, was settled several years after the settlement of the Redacted Covered Action.[3] Claimant filed a whistleblower award application on Redacted.

II. The Preliminary Determination and Response

The CRS issued a Preliminary Determination[4] recommending that Claimant's award claim be denied because Claimant's whistleblower submission was not made voluntarily as required by Exchange Act Section 21F(b)(1) and Rules 21F-3 and 21F-4(a)(1).[5] The CRS found that Claimant's submission was not voluntary because Claimant made the submission after receiving a request for an interview concerning the same subject matter from Commission staff through Claimant's former employer.

Claimant submitted a timely written response contesting the Preliminary Determination.[6] Claimant's response raises two objections. First, Claimant contends that the "internal disclosures" *** made to *** supervisors beginning in Redacted render *** eligible for an award.[7] Second, *** asserts that the information *** provided to the Commission "significantly contributed to the successful outcomes of the *** SEC Enforcement Actions covered by or related to Redacted." According to Claimant, *** "'reported original information through [*** company's] internal … procedures for reporting allegations of possible violations of law before … [***] reported to the Commission'" and the company "'later provided [***] information to the Commission …; and the information [the company] provided to the Commission … significantly contributed to the success of the action … that was already under … investigation by the Commission [*quoting* Exchange Act Rule 21F-4(c)(2) and (3)].'" Claimant notes that, in

[2] Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a). Claimant contends that the Redacted Action should be combined with the Redacted Covered Action to allow for the posting of a second NoCA so that Claimant could apply for an award for that NoCA. Given that Claimant did not voluntarily submit information to the Commission and is thus not eligible for a whistleblower award, as discussed below, we do not address this contention in our order.

[3] The monetary sanctions ordered against Redacted were less than $1 million. Exchange Act Section 21F(a)(1) defines a "Covered Action" as an enforcement action "brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000."

[4] Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

[5] Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rules 21F-3 & 4(a)(1), 17 C.F.R. §§ 240.21F-3 & 4(a)(1).

[6] Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

[7] Claimant asserts that by first reporting internally and then later reporting *** allegations to the Commission, Claimant complied with the requirements of Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3) by having "reported original information through [*** employer's] internal … procedures for reporting allegations of possible violations of law before … [***] reported to the Commission; [and Claimant's employer] later provided [Claimant's] information to the Commission …; and the information [Claimant's employer] provided to the Commission … significantly contributed to the success of the action … that was already under … investigation by the Commission."

addition to *** internal disclosures, *** "also voluntarily met with the SEC, Redacted " and that, during this meeting, *** "answered and expanded on questions regarding *** interactions with Redacted as well as *** discussions and emails with other . . . employees."

III. Analysis

Section 21F(b)(1) of the Exchange Act requires that a whistleblower submit original information "voluntarily" in order to be considered for an award.[8] The purpose of this requirement is to "create a strong incentive for whistleblowers to come forward early with information about possible violations of the federal securities laws, rather than wait to be approached by investigators."[9] Rule 21F-4(a)(1) establishes a "simple and straightforward test 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."[10] While we do not treat an information request to an employer as necessarily "directed to" all employees who may possess responsive information, we do treat a request to an employer specifically seeking an interview of a particular employee as "directed to" that employee for purposes of Rule 21F-4(a)(1).[11]

Claimant maintains that *** internal reporting to *** former employer beginning in *** and the employer's subsequent reporting of this information to the Commission makes *** eligible to receive a whistleblower award. Rule 21F-4(b)(7) provides that if an individual reports allegations of possible wrongdoing to an entity and then, "within 120 days, submit[s] the same information to the Commission pursuant to §240.21F-9," the Commission will consider that the individual provided the information to the Commission as of the date it was first provided to the entity.[12] Even if Claimant internally reported before receiving the Commission's request for an interview in ***, that internal report occurred years prior to the request from the Commission and thus Claimant cannot avail Redacted of the Rule 21F-4(b) 120-day lookback provision. Accordingly, the effective date of *** submission of information to the Commission is Redacted, not *** which is subsequent to the request from the Commission.

Here, it is undisputed that Commission staff contacted Claimant's former employer in Redacted to request an interview with Claimant, and that Claimant was interviewed by the Commission's and other agencies' staff before Claimant submitted *** Form TCR to the Commission in Redacted. It is further undisputed that the interview related to the subject matter of Claimant's later tip. We thus find that Claimant's submission of information to the Commission was not done voluntarily and, therefore, Claimant does not qualify for a whistleblower award.

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[8] Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).
[9] *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Exchange Act Rel. No. 64545 (May 25, 2011) at 25.
[10] Whistleblower Award Proceeding No. 2018-11, Exchange Act Release No. 84046 (Sept. 6, 2018) at 8.
[11] Whistleblower Award Proceeding No. 2019-7, Exchange Act Release No. 86010 (June 3, 2019) at 2.
[12] 17 C.F.R. § 240.21F-4(b)(7).

IV. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary