

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94647 / April 8, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-47

In the Matter of the Claim for an Award

in connection with

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 application submitted by Redacted (“Claimant”) in connection with Covered Action Redacted (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

In Redacted, the Commission opened an investigation, based on a tip received from a source other than the Claimant, to look into allegations that Redacted (the “Company”) was Redacted. On Redacted, the Commission filed a civil enforcement action in federal district court (“the Complaint”) charging the Company, its Redacted and Redacted (collectively with the Company and Redacted the “Defendants”) with (1) Redacted Redacted; and (2) Redacted Redacted.

In Redacted the Commission filed amendments to the Complaint to add Redacted as Defendants. The amendments were filed because, at the time the Complaint was filed, the staff did not have sufficient evidence to charge Redacted or the other Defendants. However, after filing the Complaint, the staff obtained additional evidence strongly supporting Redacted role in Redacted

Redacted This evidence was not obtained from Claimant but from other sources.

Redacted after the Commission filed the Complaint, but before the Commission filed its amendments to the Complaint, Claimant, in Redacted, submitted a tip to the Commission. In his/her tip, Claimant alleged that Redacted was continuing Redacted after the Commission's complaint was filed.³ Following the submission of this tip, Claimant submitted additional information to the investigative staff, including, among other things, Redacted

On Redacted the district court entered final judgments in favor of the Commission that ordered Defendants to pay \$ Redacted in disgorgement plus \$ Redacted in civil penalties.⁴

The Office of the Whistleblower posted Notice of Covered Action Redacted on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days.⁵ Claimant filed a timely whistleblower award claim.

² Redacted Redacted the Commission filed its enforcement action, the Redacted Redacted ("Other Agency") filed Redacted

³ Claimant further charged that the Company had Redacted Redacted

⁴ The Defendants also paid \$ Redacted

⁵ See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

B. The Preliminary Determination

The CRS issued a Preliminary Determination⁶ recommending that Claimant's claim be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934⁷ and Rules 21F-3(a)(3) and 21F-4(c) thereunder.⁸ In reaching this determination, the CRS found that the information Claimant provided did not help advance the investigation or the resulting enforcement action, nor did it materially contribute to the progress of discovery in the action.

C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.⁹ In his/her response, Claimant makes two arguments. First, Claimant asserts that he/she had provided more than 80 pages of evidence and information to the Commission, and made nearly 100 phone calls to the investigative staff¹⁰ showing that ^{Redacted} continued ^{Redacted} ^{Redacted} even after the Commission's enforcement action had been filed. Claimant contends that the information and evidence he/she provided contributed to the success of the Covered Action.

Second, Claimant requests "a formal investigation into all of [the staff's] recorded phone calls between [Claimant] and [the staff] as well as all email correspondence. Pictures. Evidence and countless pieces of information which assisted [the Commission] in obtaining . . . judgement[s] against [the Defendants]." ¹¹ Claimant argues that such an investigation would "provide ample evidence in validating [Claimant's] claim for a whistleblower award" and expresses concern that the CRS may not have "thoroughly reviewed all the evidence and information [Claimant] provided which assisted the SEC in obtaining [its] judgment[s] [against the Defendants]."

⁶ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁷ 15 U.S.C. § 78u-6(b)(1).

⁸ 17 C.F.R. §§ 240.21F-3(a)(3) and 4(c).

⁹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

¹⁰ In Claimant's award application, Claimant notes that the evidence included, among other items, ^{Redacted} ^{Redacted}

. The staff also notes in a sworn declaration under penalty of perjury ^{Redacted} that Claimant provided the staff with

While Claimant asserts that he/she made nearly 100 phone calls to the staff, the staff stated that it believed there were significantly fewer calls than this.

¹¹ Claimant asserts that the hard drive on his/her computer crashed so that he/she only has copies of the "countless pieces of evidence and information sent to [the staff] on [his/her] iPhone." Claimant incorrectly assumed in his/her response that the staff recorded its calls with Claimant.

As permitted by Exchange Act Rule 21F-10(e)(1), Claimant had requested the record that formed the basis of the Preliminary Determination (“Record Request”). In response to the Record Request, OWB sent Claimant a standard Confidentiality Agreement (“CA”) which, under Rules 21F-8(b)(4) and 21F-12(b), OWB may require claimants to sign before providing them the materials comprising the record. In its correspondence to Claimant enclosing the CA, OWB advised Claimant that if he/she did not sign and return the CA within two weeks, OWB would “deem [Claimant] to have abandoned and waived [his/her] request to receive the Preliminary Determination materials.” Claimant did not return the CA by the deadline or thereafter.

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.¹² As relevant here, original information leads to a successful enforcement action if either: (i) the original information caused the staff to open an investigation or to inquire concerning different conduct as part of a current investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action.¹³

We find that the information Claimant provided did not lead to the successful enforcement of the Covered Action. Claimant submitted his/her tip to the Commission on ^{Redacted} nearly a year after the staff opened its investigation (and ^{Redacted} after the Commission filed its Complaint in the Covered Action), and thus Claimant’s information could not have caused the staff to open its investigation. The staff responsible for the Covered Action confirmed that Claimant’s information did not result in the opening of the investigation.

While Claimant submitted his/her tip before the Commission filed its amendments to the Complaint in ^{Redacted} the staff declared in its sworn declaration, under penalty of perjury, that Claimant’s information did not contribute to the investigation after it had been opened.¹⁴ Specifically, the staff stated that the information Claimant provided “did not materially contribute to the progress of discovery in the action,” nor did it “help[] advance or contribute to the success of the . . . [i]nvestigation, or the [Covered Action], and none of [Claimant’s] information had any impact on the charges brought by the Commission.” The staff explained that, by the time it received Claimant’s information, “the investigation was so far along . . . documents had been subpoenaed, testimony was taken, and [the staff] was aware of all

¹² See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹³ See Exchange Act Rule 21F-4(c)(1)-(2), 17 C.F.R § 240.21F-4(c)(1)-(2).

¹⁴ While the staff believed when it received Claimant’s information that it would prove to be helpful and it was able to serve discovery requests to the Defendants based on Claimant’s information, the staff notes in its declaration that, as it turned out, it “did not obtain any useful information in discovery responses that related to anything [Claimant] provided, and [it was] unable to substantiate [Claimant]’s claims.” In this regard, the staff explained that “[a]t this point the investigation was so far along that this information was not helpful.”

of the underlying charges.” We find the staff’s declaration to be credible and, accordingly, find that Claimant’s information did not cause the staff to inquire concerning different conduct as part of its investigation, nor did it significantly contribute to the success of the Covered Action. We thus conclude that Claimant’s information did not lead to the success of the Covered Action and that, as a result, Claimant is ineligible for an award with respect to the Covered Action.¹⁵

With regard to Claimant’s request to determine what information the staff received from the Claimant and whether it was all provided to the CRS, Exchange Act Rule 21F-12 identifies the materials that may form the basis of an award determination and that may comprise the record on appeal. This rule further specifies that OWB may request an executed CA as a precondition to providing these materials to a claimant. OWB’s request that Claimant sign a CA is consistent with OWB’s practice of asking all claimants who request the record to sign a standard CA.¹⁶ Moreover, Rule 21F-12(b), which provides that OWB may require the execution of a CA, is reasonably designed to protect whistleblower confidentiality and the Commission’s law enforcement interests.¹⁷ Claimant was advised by OWB that if he/she did not sign and return the CA within two weeks, OWB would deem Claimant to have abandoned and waived his/her request to receive the Preliminary Determination materials. Claimant did not return the CA by the deadline (or afterwards) and thus abandoned and waived his/her request to receive the materials.¹⁸ Claimant is not now entitled to discovery of these materials.

We also reject Claimant’s request for “a formal investigation” into what the staff did with the information Claimant provided. The whistleblower rules permit an award claimant to request and to receive a copy of the materials that formed the basis of the Preliminary Determination, a right which Claimant waived as discussed above. But, as we have previously pointed out, “the whistleblower rules do not authorize a claimant to go on a fishing expedition to depose staff and to obtain copies of the SEC’s entire investigative file.”¹⁹ Similarly, the rules do not permit a claimant to investigate, or cause the Commission to investigate, how the staff utilized the information it received from a claimant. Moreover, Claimant is incorrect that the CRS had an inadequate evidentiary basis for its determination that Claimant’s whistleblower award claim be

¹⁵ To the extent Claimant applied for a related action award in connection with the Other Agency Action, this claim fails. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. *See* Exchange Act Section 21F-6(b), 15 U.S.C. § 78u-6(b), and Exchange Act Rules 21F-3(b)(1), 17 C.F.R. § 240.21F-3(b)(1). Since Claimant does not qualify for an award in the Covered Action, Claimant’s claim for an award in connection with the Other Agency Action cannot succeed.

¹⁶ *See, e.g.*, Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 93604 (Nov. 18, 2021).

¹⁷ *Id.*

¹⁸ According to a sworn declaration from OWB staff, Claimant did not communicate with OWB after OWB sent Claimant the CA, nor did Claimant express a refusal to sign the CA.

¹⁹ Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 88973 (May 29, 2020) at 5. *See also* Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (noting that the whistleblower rules “do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section”).

denied. Exchange Act Rule 21F-12 identifies the materials that form the basis of an award determination.²⁰ The record presented for consideration by the CRS included all these required materials. Specifically, the record included Claimant's Form TCR, attachments and other materials provided by Claimant to the staff, as well as a sworn declaration from the staff which assessed the value the staff found in the information provided by the Claimant.

III. Conclusion

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

By the Commission.

Eduardo A. Aleman
Deputy Secretary

²⁰ Exchange Act Rule 21-F-12(a), 17 C.F.R § 240.21F-12(a), lists the items that constitute the materials that the Commission, the CRS and OWB may rely upon to make an award determination. As relevant here, these include among other items: (1) publicly available materials from the covered action, such as the complaint, any amendments thereto, and the final judgments; (2) the whistleblower's Form TCR, attachments and other related materials provided by the whistleblower to assist the Commission with its investigation; (3) the whistleblower's award application on Form WB-APP, and attachments and supplemental materials; and (4) sworn declarations from the Commission staff relevant to the award determination.