

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95672 / September 6, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-78

In the Matter of the Claim for an Award

in connection with

[REDACTED]
Notice of Covered Action [REDACTED]

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

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

I. Background

A. The Covered Action

On [REDACTED] the Commission charged [REDACTED] [REDACTED] The Commission’s complaint alleged that the defendants [REDACTED] (the “Company”) and [REDACTED] [REDACTED] The Commission alleged that the Company [REDACTED] [REDACTED] The court entered final judgment against the Company and [REDACTED]

¹ See Exchange Act Rule 21F-18, 17 C.F.R. § 240.21F-18.

² OWB also preliminarily denied the award claim of one other claimant. This 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).

the individual defendants, permanently enjoining them from future violations of the securities laws and ordering more than [REDACTED] in monetary sanctions.

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 filed a timely whistleblower award claim.

B. The Preliminary Summary Disposition

On [REDACTED], OWB issued a Preliminary Summary Disposition recommending that Claimant’s claim be denied because Claimant’s information was not provided to Enforcement staff assigned to the investigation that led to the Covered Action (the “Investigation”) and therefore 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. OWB determined that Claimant’s information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of claimant’s information, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. OWB stated that Enforcement staff responsible for the Investigation had opened the Investigation based upon a source other than Claimant and had never received any information from or had any communication with Claimant.

C. Claimant’s Response to the Preliminary Summary Disposition

Claimant submitted a timely written response contesting the Preliminary Summary Disposition (the “Response”).³ Claimant principally argues that Claimant provided specific, credible, and timely information to the Commission and is therefore entitled to an award, and that Exchange Act Rule 21F-4(c)(1) “establishes an objective test; what the SEC did or did not do is irrelevant to the question of whether the character of the information provided was such that it was sufficiently specific, credible, and timely to cause the staff to act.” Claimant notes that the Commission received Claimant’s tip before the staff opened the Investigation and therefore had the necessary information to begin the Investigation. Claimant also argues, among other things, that the record does not sufficiently demonstrate that Enforcement staff did not use Claimant’s information. The Claimant also argues that the staff declaration provided to Claimant pursuant to Claimant’s request for the record materials upon which OWB relied when making its recommendation⁴ was based on hearsay evidence and does not provide a complete recitation of the facts because the declaration is partially redacted.

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

⁴ See Exchange Act Rule 21F-11(e)(1)(i), 17 C.F.R. § 240.21F-11(e)(1)(i).

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.⁵ Additionally, and as relevant here, original information will be deemed to have led 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 judicial or administrative action based in whole or in part on conduct that was the subject of [the] original information”;⁶ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁷

In determining whether 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.⁸ 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.⁹ For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

First, Claimant misinterprets the eligibility criteria under Rule 21F-4(c)(1): contrary to Claimant’s arguments in the Response, our rules do not provide for awards based upon the potential or theoretical use of a claimant’s information. Instead, awards are based upon the actual use of a claimant’s information by Commission staff. As we have stated, “the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower’s information actually had on the investigation.”¹⁰ The Commission will not speculate on the supposed value of Claimant’s information in the absence of its actual use during the Investigation.

Accordingly, while Claimant may have submitted information to the Commission prior to the opening of the Investigation, the record here demonstrates that Claimant’s information did not cause Enforcement staff responsible for the Investigation to open the Investigation or cause the staff to inquire into different conduct. A staff declaration, which we credit, confirms that the

⁵ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁶ *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁷ *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁸ 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.

⁹ Exchange Act Rel. No. 85412 at 8-9.

¹⁰ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 92542 at 4 (Aug. 2, 2021) (quoting Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90872 (Jan. 7, 2021)) (internal quotation marks omitted).

staff responsible for the Investigation opened the Investigation based upon a referral from the [REDACTED] (“Other Agency 1”). A supplemental declaration from OWB staff, which we also credit, confirms that, after review of Claimant’s information, other Enforcement staff referred Claimant’s information to the [REDACTED] (“Other Agency 2”) and the [REDACTED] (“Other Agency 3”) and then closed Claimant’s submission with a disposition of “no further action.” Contrary to Claimant’s contentions, there is no evidence in the record that Other Agency 2 or Other Agency 3 had any role in the referral to the Commission from Other Agency 1, and the record demonstrates that Other Agency 1 has no record of receiving any information from Claimant or that Claimant was the source of Other Agency 1’s referral to the Commission. And while other Enforcement staff reviewed Claimant’s tip and forwarded it to Other Agency 2 and Other Agency 3, there is no evidence in the record that Claimant’s information was forwarded to staff assigned to the Investigation.

The record demonstrates that Claimant did not cause the Commission to inquire into different conduct and did not significantly contribute to the success of the action: Claimant’s information was not used by staff assigned to the Investigation, nor did Claimant ever communicate with staff assigned to the Investigation.¹¹

For these reasons, we deny Claimant’s whistleblower award claim.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ Claimant’s other arguments regarding the contents of the record are not persuasive. The Commission may rely upon hearsay evidence in its administrative proceedings. *See, e.g., In the Matter of Guy P. Riordan*, Securities Act Release No. 9085 at 25 (Dec. 11, 2009). Further, Claimant offers no reason for us to doubt the reliability or trustworthiness of the declaration provided by Enforcement staff. Claimant also received the record materials to which he/she was entitled. Claimants are only entitled to record material relevant to their own claim for award. OWB may also “make redactions as necessary to comply with any statutory restrictions,” such as whistleblower confidentiality requirements. Exchange Act Rule 21F-12(b). Redactions to the staff declaration at issue here were done properly pursuant to those requirements.