

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96075 / October 14, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-02

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 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.

I. Background

A. The Covered Action

On Redacted the Commission filed a complaint against Redacted (the “Company”) in federal district court alleging that the Company Redacted. The complaint further alleged that Redacted.

The complaint also alleged that the Company Redacted.

Redacted The Company agreed to settle the charges by consenting to Redacted.

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 Determination

On ^{Redacted} the CRS issued a Preliminary Determination 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 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS concluded 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. The CRS determined that the investigation which led to the Covered Action (the “Investigation”) was opened based upon a source other than Claimant and that Enforcement staff did not receive any information from Claimant before or during the Investigation. The CRS also determined that while Claimant provided information to the staff over the telephone after the Commission filed the Covered Action, none of the information provided by Claimant during the telephone call was used in or contributed to the success of the Covered Action.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.¹ Claimant principally argues that the information Claimant provided to the Commission appears to be the same information that was also used in the Commission’s complaint. Claimant contends that information Claimant provided might have been used by the staff after coming from another source, specifically, the Company. Claimant also states that the Company provided documents to Claimant ^{Redacted} in ^{Redacted} the staff’s investigation began in ^{Redacted} and Claimant’s tip was submitted in ^{Redacted} noting that “[t]he data provided to me quite clearly became the basis for the SEC investigation. The data was PRECISEY [*sic*] the same. So, the only plausible explanation is that the very same ^{Redacted} was provided to the SEC.”²

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

² Claimant also contends that the Company did not provide sufficient documents to the Commission during the investigation and the Company potentially committed perjury. ^{Redacted}

^{Redacted}
whistleblower award proceeding.

These allegations are beyond the scope of this
^{Redacted}

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.³ As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered 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;⁴ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁵

In determining whether the 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.⁶ 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.⁷

Claimant does not qualify for an award. First, the record demonstrates that the Investigation was opened in ^{Redacted} approximately six months before Claimant submitted his/her initial tip to the Commission, in response to findings of an examination of the Company by Commission staff. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant’s information did not significantly contribute to the success of the Covered Action or cause the staff to inquire into different conduct as part of a current investigation. Claimant submitted three TCRs to the Commission. Claimant’s first tip, submitted in ^{Redacted} was not forwarded to Commission staff assigned to the Investigation, but was forwarded to the Commission’s Office of Investor Education and Advocacy (“OIEA”). Enforcement staff assigned to the Investigation confirmed, in a supplemental declaration, which we credit, that they do not recall receiving or reviewing any information from OIEA relating to Claimant or the subject matter of the Investigation. Claimant’s second tip, submitted in ^{Redacted} was neither received nor reviewed by the staff assigned to the Investigation. Claimant’s third tip, submitted in ^{Redacted} and approximately three months after the Covered Action was filed, was

³ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

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

⁵ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁶ 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 (same).

⁷ Exchange Act Rel. No. 85412 at 8-9.

likewise neither received nor reviewed by the staff assigned to the Investigation. And although Claimant spoke with Enforcement staff in ^{Redacted} approximately two months after the Covered Action was filed, the staff declaration confirms that Claimant's information did not advance the Investigation.⁸

For these reasons, Claimant is not entitled to an award.⁹

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

⁸ To the extent Claimant is arguing that Claimant may be the original source of information the Commission obtained from another source, Claimant's argument fails. Among other things, in order to consider the claimant to be an original source of information that the Commission receives from another source, the claimant needs to show that "the other source obtained the information from you or your representative." Exchange Act Rule 21F-4(b)(5). The record does not show, and Claimant's Response does not contend, that Claimant or his representative provided original information to another source; instead, Claimant appears to argue that the Company "prepared" the information for Claimant ^{Redacted} and that the Company subsequently provided the information to the Commission. Even assuming Claimant's allegations to be true, Claimant's allegations do not establish Claimant as the original source because Claimant did not provide the information to any other source that subsequently submitted the information to the Commission as required by Rule 21F-4(b)(5).

⁹ Claimant's Response also questions why the Commission did not investigate or charge what Claimant views as additional misconduct by the Company in his/her submissions. Such concerns about other hypothetical charges, however, are beyond the scope of this whistleblower award proceeding, which addresses whether Claimant voluntarily provided original information that led in fact to the success of the Covered Action. *See* Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).