

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96658 / January 13, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-27

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 in federal district court (“District Court”) against Redacted, alleging various violations of the federal securities laws in connection with Redacted. The complaint also named, as relief defendants, Redacted. The District Court issued final judgments against Redacted. Redacted on Redacted, and default judgments against relief defendants Redacted on Redacted. In total, the District Court ordered defendants and relief defendants to pay Redacted in disgorgement, Redacted in prejudgment interest, and Redacted in civil penalties.

On ^{Redacted}, the Office of the Whistleblower (“OWB”) posted a Notice of 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 award 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 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 preliminarily determined that Claimant’s information was not the impetus for the investigation leading to the Covered Action (“Investigation”) and did not significantly contribute to the success of the Covered Action because investigative staff responsible for the Covered Action did not receive or review any information from, or have any communications with, Claimant.

Claimant’s award application asserted that Claimant had submitted two tips to the Commission via the Commission’s Tips, Complaints, and Referrals system (“TCR System”).¹ The record reflects that the Commission received one of the purported tips, assigned TCR submission number ^{Redacted}, on ^{Redacted} (“^{Redacted} Tip”). Claimant’s award application noted that another purported tip was submitted earlier, on ^{Redacted} ^{Redacted} (“Purported Initial Tip”), after Claimant received a voicemail message from ^{Redacted} ^{Redacted} employee ^{Redacted} Employee^{***} about potential employment with the company. The award application, however, did not include a TCR submission number for the Purported Initial Tip. The Preliminary Determination was supported by a declaration (“Initial Declaration”)² of one of the primary Division of Enforcement (“Enforcement”) attorneys assigned to the Investigation. The Initial Declaration, which we credit, confirmed that the ^{Redacted} Tip was “designated for NFA”³ and the TCR System did not reflect that the ^{Redacted} Tip was forwarded to Enforcement staff responsible for the Investigation. In addition, the Initial Declaration stated that Enforcement staff responsible for the Investigation

¹ The TCR System is the Commission’s electronic database which records and stores information received from whistleblowers and others about potential securities law violations and records staff action taken with regard to tips, complaints, and referrals (“TCRs”) entered into the system.

² The whistleblower rules contemplate that the record upon which an award determination is made shall consist of, as relevant here, a sworn declaration provided by the relevant Commission staff, in addition to the publicly available materials related to the Covered Action, the claimant’s tip, the claimant’s award application, and any other materials timely submitted by the claimant in response to the Preliminary Determination. *See* Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a).

³ An “NFA” or “No Further Action” disposition indicates that the staff will not take any additional steps with respect to a TCR unless subsequent information leads staff to reopen or reexamine that TCR.

were not aware of the ^{Redacted} Tip prior to their receipt of Claimant’s award application. As to the Purported Initial Tip, the Initial Declaration stated that the TCR System does not identify any TCRs submitted by Claimant on ^{Redacted}, any TCRs submitted by an anonymous user on ^{Redacted} that have ^{Redacted} Employee or ^{Redacted} in the subject line, or any other TCRs submitted by Claimant that have ^{Redacted} Employee or ^{Redacted} in the subject line except for the ^{Redacted} Tip. Further, according to the Initial Declaration, none of the members of the Enforcement team responsible for the Investigation recalled receiving any information provided by Claimant or communicating with Claimant, before or during the Investigation.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.⁴ Claimant principally argues that, although the staff was unable to locate it at the time of the Preliminary Determination, information from the Purported Initial Tip may have been passed on to staff assigned to the Covered Action. Claimant posits that the staff was unable to locate the Purported Initial Tip because Claimant may have submitted it anonymously and the staff may have used the wrong search terms in attempting to locate it in the TCR System. Claimant asserts that Claimant’s telephone number at the time would have been included in the Purported Initial Tip and suggested a number of additional search terms that the staff could use in order to locate that tip in the TCR System. Claimant contends that a Commission attorney or investigator placed a telephone call to Claimant on ^{Redacted} and states that Claimant is “99% certain” that the interaction between Claimant and Commission staff was initiated as the result of the Purported Initial Tip submitted by Claimant. To support this assertion, Claimant provided billing records for the telephone number that itemize incoming and outgoing calls from ^{Redacted} through ^{Redacted}. These records reflect outgoing calls to the telephone number 202-551-4790⁵ at ^{Redacted} on ^{Redacted} ^{***}, as well as an incoming call at ^{Redacted} on ^{Redacted} that Claimant believes was from an attorney or investigator with the Commission. Claimant also included with the Response several screenshots that Claimant asserts corroborate the timeline as recalled by Claimant.

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.⁶ As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2),⁷ respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either (1) the original information caused the staff to open an investigation “or to inquire concerning different conduct

⁴ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁵ This is the telephone number for the whistleblower hotline monitored by OWB.

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

⁷ We construe the Response as applicable only to subsections 1 and 2 of Rule 21F-4(c). Consequently, the analysis that follows addresses only those two subsections of the provision.

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;⁸ or (2) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁹

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.¹⁰ 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.¹¹

Claimant does not qualify for an award under either of the above-described provisions. First, the record demonstrates that staff opened the Investigation in [Redacted] as the result of a tip from someone other than Claimant, more than fifteen months prior to the date Claimant contends the Purported Initial Tip was submitted to the Commission. Accordingly, Claimant’s information did not cause the staff to open the Investigation. Second, as discussed below, Claimant’s information did not cause the staff to inquire concerning different conduct in the Investigation or significantly contribute to the success of the Covered Action because no information from Claimant was received or reviewed by Enforcement staff responsible for the Investigation.

Consistent with the award application, the Response contends that Claimant submitted tips twice via the TCR System – the Purported Initial Tip and the [Redacted] Tip. As to the Purported Initial Tip, the record does not support Claimant’s assertion that any such tip was submitted via the TCR System on [Redacted]. As stated above, the Initial Declaration noted the absence in the TCR System of any tips submitted by Claimant on [Redacted], any tips submitted anonymously on [Redacted] that have [Redacted] Employee or [Redacted] in the subject line, or any other tips submitted by Claimant that have [Redacted] Employee or [Redacted] in the subject line except for Claimant’s [Redacted] Tip. Furthermore, in an additional sworn declaration (“OWB Declaration”), OWB staff have confirmed that they conducted additional searches of the TCR System using the search terms suggested by Claimant and were unable to locate any relevant records of tips submitted anonymously between [Redacted] and [Redacted] that include any of the suggested search terms. The OWB Declaration also states that staff was unable to locate any tips in the TCR System that include Claimant’s telephone number. In the Response, Claimant asserts this telephone number would have been included in the Purported Initial Tip.

⁸ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁹ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹⁰ 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.

¹¹ Exchange Act Rel. No. 85412 at 8-9.

*** Claimant's assertion that Commission staff contacted Claimant by telephone on ^{Redacted} is supported by the record; however, the record reflects that this telephone call was from OWB staff – not from Enforcement staff responsible for the Investigation – and was placed in response to a voicemail that Claimant left on OWB's whistleblower hotline on the morning of ^{Redacted}. According to the OWB Declaration, OWB records reflect that, when staff returned the call, they searched for, but could find no record of, the Purported Initial Tip. Further, according to the OWB Declaration, OWB records reflect that Claimant left three additional voicemails on the whistleblower hotline on ^{Redacted} that indicated that Claimant intended to resubmit the information that Claimant had previously attempted to submit.

Based on the record, it appears that the "interaction" Claimant recalls having with Commission staff on ^{Redacted} was the telephone call between Claimant and OWB staff. While the record indicates Claimant may have tried submitting a tip via the TCR System around ^{Redacted}, there is no evidence that Claimant was successful in doing so, nor any evidence that any information Claimant provided OWB was ever conveyed to Enforcement staff responsible for the Investigation. We note that the screenshots provided by Claimant with the Response do not provide any evidence that Claimant was ever in contact with, or that any of Claimant's information was ever forwarded to, Enforcement staff responsible for the Investigation.

We therefore conclude that Claimant did not provide information that led to the successful enforcement of the above-referenced 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. As a result, Claimant is ineligible for an award with respect to the Covered Action.

III. Conclusion

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

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary