

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97838 / July 5, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-73

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 issued a Preliminary Summary Disposition (“PSD”) recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant 2”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 2 filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant 2’s award claim is denied.¹

I. Background

A. The Covered Action

On Redacted the Commission instituted settled cease-and-desist proceedings against Redacted (the “Company”) finding that the Company violated Redacted

According to the Commission’s order, the Company Redacted

Redacted The Company Redacted

Redacted To

¹ The Office of the Whistleblower (“OWB”) also preliminarily determined to recommend that the award applications of three other claimants be denied. None of these claimants submitted a request for reconsideration and, as such, the Preliminary Summary Dispositions with respect to their award claims became the Final Order of the Commission, pursuant to Rule 21F-18(b)(4).

resolve the matter, the Company agreed to pay disgorgement ^{Redacted} and prejudgment interest ^{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 2 filed a timely whistleblower award claim.

B. The Preliminary Summary Disposition

On ^{Redacted} OWB issued the PSD in connection with the Covered Action recommending that the whistleblower award claim of Claimant 2 be preliminarily denied. OWB noted that the information provided by Claimant 2 was never provided to or used by staff handling the Covered Action or underlying investigation, and those staff members otherwise had no contact with Claimant 2. Therefore, Claimant 2 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 because the information provided did not: (1) cause the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; 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 also noted that Commission staff responsible for the underlying investigation in the Covered Action never received any information from Claimant 2 or had any communications with Claimant 2. As such, Claimant 2 did not provide any information that was used in, or otherwise had any impact on, the investigation or resulting Covered Action.

C. Claimant 2’s Response to the Preliminary Summary Disposition

Claimant 2 submitted a timely written response (the “Response”) contesting the PSD.² In the Response, Claimant 2 wrote that: “Its apparent that none of my earlier tips, (since year of ^{Redacted} and last one in ^{Redacted} with valuable information provided to whistleblower attorney’s office first and then being directed then to contact help desk of whistleblower office with any questions further I have a proof of communication attached bellow.” (errors in original). Claimant 2’s Response appears to suggest that he/she submitted additional TCRs and other documents that were “clearly overlooked” with respect to his/her award claim made in connection with the Covered Action. Similarly, Claimant 2 suggests his/her information was overlooked, neglected, or ignored causing his/her tip not to be forwarded to investigative staff in a reasonable time. Claimant 2 also wrote that he/she included additional documents in his/her Response because they “prove[] that securities violations [] took place in [his/her] case.” Finally, Claimant 2’s Response takes issue with the “heavily redacted statements” in the Division of Enforcement (“Enforcement”) staff declaration (“Declaration”) and notes that the Declaration was seemingly “signed in ^{Redacted}.”

² See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3).

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 Under Rule 21F-4(c), as relevant here, original information will be deemed to “lead 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;⁴ or (ii) the conduct was already under 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 For the reasons discussed below, Claimant 2’s information does not merit a whistleblower award in the Covered Action because the record does not establish that the information led to a successful enforcement action, as required by Rule 21F-4(c).

First, the record demonstrates that the Commission’s investigation which led to the Covered Action (the “Investigation”) was opened before Claimant 2 submitted his/her information to the Commission. According to the Declaration, which we credit, the Investigation was opened in early ^{Redacted} as a result of the staff’s investigative efforts, and not as a result of any tip. Accordingly, Claimant 2’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant 2’s tip to the Commission did not cause the staff to inquire into different conduct or significantly contribute to the success of the Covered Action. Claimant 2’s Response takes issue with the indication in the Declaration that Claimant 2’s TCR, dated ^{Redacted} (“^{Redacted} TCR”), did not involve securities violations and was neither received nor reviewed by the Commission staff assigned to the Investigation. Claimant 2’s Response suggests that he/she submitted additional TCRs and other documents that were not considered

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.

with respect to his/her award claim made in connection with the Covered Action, and that this “overlooked” information contributed to the Investigation.

According to a sworn declaration from OWB staff, which we credit, an additional search of the TCR system did not yield any TCRs submitted by the Claimant other than the ^{Redacted} TCR. Claimant 2 also points to other documents he/she included in his/her Response to prove that securities violations occurred. But, as reflected by the record, none of Claimant 2’s information, including attachments to the TCR, contributed to the success of the Covered Action given that Claimant’s information was neither received nor reviewed by the staff assigned to the Investigation.

Claimant 2’s Response also included an email exchange with staff of the SEC’s Office of Investor Education and Advocacy (“OIEA”) dated on or around ^{Redacted}. However, nothing in this document suggests that any information provided by Claimant 2 was used in or had any impact on the charges brought by the Commission in the Covered Action. Further, the email exchange does not appear to contain any information about a securities law violation and the record does not indicate that it was shared with staff assigned to the Investigation. Instead, the email exchange reflects the OIEA staff’s referral of Claimant 2 to another agency.

Lastly, Claimant 2’s Response takes issue with the “heavily redacted statements” in the Declaration and notes that the Declaration was “signed in ^{Redacted}.” Claimant 2’s concerns regarding the Declaration are misplaced. Claimant 2 received a copy of the Declaration upon request. As reflected by the Confidentiality Agreement that Claimant 2 signed, “... OWB may redact any information therein that relates to another claimant’s award application ...” To the extent that Claimant 2 is seeking an unredacted copy of the Declaration, Claimant 2 is not entitled to it. The redactions in the Declaration were properly made and in accordance with law to protect the identity of other claimants.⁸ With respect to Claimant 2’s argument that the Declaration was “signed in ^{Redacted}” – it appears that the Declaration was inadvertently dated “^{Redacted}.” Upon discovery, the mistake was corrected and Enforcement staff dated the Declaration “^{Redacted}.” The revised date did not affect the substance of the Declaration. Accordingly, Claimant 2 received the appropriate information related to his/her claim.

For these reasons, Claimant 2 is not eligible for a whistleblower award in connection with the Covered Action.

⁸ See Exchange Act Rule 21F-12(b).

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant 2 in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

J. Lynn Taylor
Assistant Secretary