

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97804 / June 27, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-69

In the Matter of the Claims for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claims submitted by Redacted (“Claimant 1”) and Redacted Redacted (“Claimant 2”) in connection with the above-referenced covered action (“Covered Action”). Claimant 1 and Claimant 2 filed timely responses contesting the preliminary denials.¹ For the reasons discussed below, Claimant 1’s and Claimant 2’s award claims are denied.

I. Background

A. The Covered Action

On Redacted
Redacted the Commission filed the Covered Action in the Redacted
Redacted (“Court”) against Redacted
Redacted (collectively “Defendants”). The Covered Action charged Defendants for Redacted
Redacted Redacted
Redacted The Covered Action alleged that Defendants Redacted

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

Redacted
Redacted The Covered Action also alleged that Defendants
Redacted
Redacted
Redacted On Redacted the Court
Redacted
entered a final judgment against Defendants that
Redacted
Redacted
Redacted The
Court also imposed Redacted in monetary sanctions against Defendants.²

On Redacted the Office of the Whistleblower (“OWB”) posted the Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.³ Claimant 1 and Claimant 2 filed timely whistleblower award claims.

B. The Preliminary Determination as to Claimant 1

On Redacted the CRS issued a Preliminary Determination⁴ recommending that Claimant 1’s claim be denied because Claimant 1 did not provide “original 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)(2) and 21F-4(b) thereunder.⁵ *First*, the Preliminary Determination recommended a denial because Claimant 1’s information was based on publicly available information, primarily information from a website; Claimant 1’s tip (“Claimant 1 TCR”) did not contain any additional evaluation of or insight into the alleged misconduct separate and apart from what was obtained from the publicly available materials. *Second*, the Preliminary Determination recommended a denial because the information provided by Claimant 1 was already known to the Commission.

² As of the date of this Final Order, Redacted has been collected in connection with the Covered Action; at this time, it is not clear whether there will be any additional collections in connection with the Covered Action. Thus, if any whistleblower award were to be issued in this matter, the maximum award at this time would equal Redacted (30% of the monetary sanctions collected); this assumes that no additional collections are made in connection with the Covered Action.

³ See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

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

⁵ The record supporting the Preliminary Determination included the declaration (“Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys who was assigned to the investigation that led to the Covered Action (“Investigation”). See Exchange Act Rule 21F-12(a).

C. Claimant 1’s Response to the Preliminary Determination

In response, Claimant 1 argues that he/she provided the Commission with information based on his/her independent knowledge and that he/she conducted independent analysis relevant to the Covered Action. Claimant 1 states that the information he/she provided to the Commission was based on information Claimant 1 obtained from various public and non-public sources, including ^{Redacted} In support thereof, Claimant 1 attaches certain documents to his/her reconsideration request—including emails, text messages, and other miscellaneous materials—which Claimant 1 alleges contain information he/she relied upon before submitting the Claimant 1 TCR to the Commission. Claimant 1 asserts that his/her information was not otherwise easily obtained by the Commission ^{Redacted} — which Claimant 1 alleges was where certain of the relevant misconduct transpired—and that even though certain information was publicly available ^{Redacted} such information cannot be considered to be publicly available ^{Redacted}

Claimant 1 alleges that his/her information prompted the Commission to initiate the Investigation. Claimant 1 believes that the temporal proximity between the time that he/she submitted the Claimant 1 TCR to the Commission in ^{Redacted} and the opening of the Investigation in ^{Redacted} indicates that the Claimant 1 TCR caused the Investigation to be opened. Claimant 1 also states that it is possible that he/she submitted the anonymous tip referenced in the Preliminary Determination (“Anonymous Tip”).⁶ Additionally, Claimant 1 states that OWB previously provided him/her with a copy of the Claimant 1 TCR but denied Claimant 1’s request to receive “all other related TCRs” and told Claimant 1 to contact the Commission’s Office of FOIA Services to request such information. Claimant 1 alleges that the other TCRs may contain information that demonstrates that Claimant 1 is entitled to an award for the Covered Action. Finally, Claimant 1 alleges that OWB discriminated against Claimant 1 due to ^{Redacted} and because he/she was unrepresented in connection with his/her award application.

D. The Preliminary Determination as to Claimant 2

On ^{Redacted} the CRS issued a Preliminary Determination⁷ recommending that Claimant 2’s claim be denied.⁸ *First*, the Preliminary Determination recommended a denial because Claimant 2 did not provide information that led to the successful enforcement of the

⁶ The Anonymous Tip is a tip that Claimant 2, an attorney, submitted to the Commission on behalf of Claimant 2’s anonymous client. There is no indication in the record that Claimant 1 was this anonymous client or was connected in any way to the Anonymous Tip.

⁷ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁸ The record supporting the Preliminary Determination included the Declaration.

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. In particular, the CRS preliminarily determined that Claimant 2, an attorney, submitted the Anonymous Tip on behalf of Claimant 2's anonymous client, and the tip was closed with a designation of "no further action" after the Commission was unable to substantiate the allegations contained therein. The Anonymous Tip did not cause Commission staff ("Staff") to open the Investigation. After opening the Investigation, Staff reviewed the Anonymous Tip; however, none of the information contained in the Anonymous Tip was used in the Covered Action, and Staff had no communications with Claimant 2 or Claimant 2's anonymous client.

Second, the Preliminary Determination recommended a denial because Claimant 2 was not a "whistleblower" under Rule 21F-2(a)(1) of the Exchange Act with respect to the Covered Action. To qualify as a whistleblower, an individual must (among other things) provide information regarding a potential securities law violation to the Commission in the form and manner that is required by Rule 21F-9(a) of the Exchange Act. The Preliminary Determination stated that Claimant 2 based his/her award claim upon a tip Claimant 2 submitted as counsel on behalf of an anonymous client. While Claimant 2's anonymous client may have been a "whistleblower," Claimant 2—who was acting as an attorney representing the anonymous client—was not a "whistleblower".

E. Claimant 2's Response to the Preliminary Determination

In response, Claimant 2 alleges that he/she was the first individual to send the Commission information that led to the initiation of the Investigation and the Covered Action. Claimant 2 states that if his/her award claim is denied, the Commission must prove that either someone else earlier than Claimant 2 provided information that led to the Covered Action or that Claimant 2's information did not lead to the Covered Action. Claimant 2 argues that he/she is an attorney by profession and that he/she submitted his/her claim as though Claimant 2 was representing himself/herself in connection with the Anonymous Tip. According to Claimant 2, he/she did not represent any other individual in connection with the submission of the Anonymous Tip. Claimant 2 alleges that instead, the source of the information contained within the Anonymous Tip was Claimant 2. Claimant 2 also complains that the record he/she received from OWB was insufficient. Claimant 2 alleges that the record did not constitute all of the relevant materials that should have been considered when Claimant 2's award claim was evaluated at the Preliminary Determination stage.

II. Analysis

A. Claimant 1

We deny an award to Claimant 1 in connection with the Covered Action. 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.⁹ For a whistleblower submission such as the Claimant 1 TCR to be considered original information, it must be: (1) derived from a whistleblower’s “independent knowledge” or “independent analysis”; and (2) not already known to the Commission from any other source.¹⁰ Claimant 1 did not provide the Commission with such information.

To start, Claimant 1 has represented to the Commission on multiple occasions that the information contained in the Claimant 1 TCR was based on publicly available sources. In the Claimant 1 TCR, dated [REDACTED] Claimant 1 was asked: “What is the source of your information?” In response, Claimant 1 stated that the source of his/her information was only “[p]ublicly available information.” Claimant 1’s whistleblower award application, dated [REDACTED] (“Claimant 1 WB-APP”), suggests that the Claimant 1 TCR information was based on “obvious information” and “website evidence.” Finally, Claimant 1 states in his/her reconsideration request that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Claimant 1 alleges in his/her reconsideration request that [REDACTED]

[REDACTED]

[REDACTED]

—transpired between [REDACTED]

[REDACTED]

Claimant 1 alleges that such communications made Claimant 1 suspect that [REDACTED]

[REDACTED]

Notably, however, Claimant 1 stated in the Claimant 1 TCR that he/she became aware of the alleged conduct on [REDACTED] This [REDACTED] date does not coincide with the time period of when Claimant 1 allegedly learned information from [REDACTED]

[REDACTED]

Instead, the [REDACTED]

[REDACTED]

[REDACTED] date directly coincides with the timing of when Claimant 1 purports to have [REDACTED]

[REDACTED]

and the information contained therein that led Claimant 1 to conclude that [REDACTED]

⁹ Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

¹⁰ Exchange Act Rule 21F-4(b)(1), 17 C.F.R. § 240.21F-4(b)(1).

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Regardless, the fact that Redacted
was publicly available information Redacted
As such, it fails to satisfy the definition of “original information,” because
it was derived from neither Claimant 1’s independent knowledge nor independent analysis.¹¹

Moreover, the fact that Redacted
was already known to the
Commission from another source and therefore fails to satisfy the definition of “original
information” under Section 21F-4(b).¹² In the Claimant 1 TCR, Claimant 1 alleged that Redacted
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¹³ Here, the relevant information— Redacted
—was already known to the Commission through another
source. As confirmed by a supplemental Staff declaration (“Supplemental Declaration”), Staff
reviewed Redacted after receiving the Claimant 1 TCR. Redacted

Redacted
After Staff
reviewed Redacted Staff reached out to another investigation team in Enforcement
working on an unrelated matter. This unrelated matter had originated in Redacted As
part of this unrelated matter, the other Enforcement investigation team had previously obtained
information related to *** such information was in the Commission’s possession prior to the
submission of the Claimant 1 TCR. Certain of this information revealed that Redacted
Redacted

Thus, the information provided by Claimant 1 that was not available Redacted
Redacted was already known to the Commission at the time that Claimant 1 submitted the
Claimant 1 TCR. The Claimant 1 TCR therefore cannot be considered to be qualifying original
information under Rule 21F-4(b)(1), as the information contained in the Claimant 1 TCR:
(1) was not derived from Claimant 1’s “independent knowledge” or “independent analysis”; and
(2) was already known to the Commission from another source.¹⁴

¹¹ “Independent knowledge” means “factual information in [an individual’s possession] that is not derived from publicly available sources.” Exchange Act Rule 21F-4(b)(2), 17 C.F.R. § 240.21F-4(b)(2). “Independent analysis” means “examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.” Exchange Act Rule 21F-4(b)(3), 17 C.F.R. § 240.21F-4(b)(3).

¹² Exchange Act Rule 21F-4(b)(1)(ii), 17 C.F.R. § 240.21F-4(b)(1)(ii) (“In order for your whistleblower submission to be considered original information, it must be: . . . (ii) Not already known to the Commission from any other source, unless you are the source of the information.”).

¹³ The substantive portion of Claimant 1’s TCR contained three sentences: Redacted
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Redacted

Redacted
¹⁴ Additionally, the Supplemental Declaration confirmed that Redacted was available for review

B. Claimant 2

We deny an award to Claimant 2 in connection with the Covered Action. 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.¹⁵ Claimant 2 did not provide the Commission with such information.

As the Preliminary Determination correctly stated, Claimant 2 did not provide any 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 noted that Claimant 2 submitted the Anonymous Tip on behalf of Claimant 2's client; the Anonymous Tip was closed with a designation of "no further action" after the Commission was unable to substantiate the allegations contained therein. Moreover, the Declaration confirmed under penalty of perjury that the Anonymous Tip did not play a role in the opening of the Investigation. The Declaration noted that Staff did not communicate with Claimant 2 or his/her anonymous client. Neither Claimant 2 nor his/her client provided any information other than the Anonymous Tip to Staff during the course of the Investigation. Further, the Declaration stated that none of the information contained in the Anonymous Tip helped advance the Investigation, and none of the information contained in the Anonymous Tip was used in, nor had any impact on, the charges brought by the Commission in the Covered Action. Additionally, there is no support for Claimant 2's allegation that the record that formed the basis of the Preliminary Determination was insufficient. Pursuant to Rule 21F-12(a), the record materials included all publicly available materials from the Covered Action, the Anonymous Tip, Claimant 2's whistleblower award application, and the Declaration.

Finally, we note that the Preliminary Determination recommended that Claimant 2's claim should also be denied because Claimant 2 was not a "whistleblower" under the Rules with respect to the Covered Action. Claimant 2 argues that he/she is an attorney by profession and that he/she submitted his/her claim as though Claimant 2 was representing himself/herself in

in the United States, where Staff was based. Thus, there is no merit to Claimant 1's contention that Redacted
publicly available in the United States. The Declaration stated that outside of submitting the Claimant 1 TCR, Claimant 1 did not provide any information to Staff, and Staff never communicated with Claimant 1. Additionally, there is no evidence supporting Claimant 1's assertions that the Commission is hiding other tips that Claimant 1 submitted to the Commission that are potentially relevant to his/her award application. The record reflects that OWB provided Claimant 1 with a copy of the Claimant 1 TCR, which Claimant 1 identified in his/her award application as the basis for Claimant 1's claim for an award (and which is part of the underlying record). To the extent that Claimant 1 would like to review other TCRs he/she has submitted to the Commission, OWB was correct to direct Claimant 1 to the Commission's Office of FOIA Services. Finally, there is no evidence supporting Claimant 1's assertions that Claimant 1 was discriminated against due to Redacted or because he/she was unrepresented in connection with his/her award application.

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

connection with the Anonymous Tip. However, even if Claimant 2 submitted the Anonymous Tip on behalf of himself/herself—and there was no separate, anonymous whistleblower that Claimant 2 represented—Claimant 2 is still not entitled to a whistleblower award because none of the information contained in the Anonymous Tip was used in, nor had any impact on, the charges brought by the Commission in the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant 1 and Claimant 2 in connection with the Covered Action be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary