

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97395 / April 28, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-51

In the Matter of the Claim for 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 (“Covered Action”). Claimant filed a timely response contesting the preliminary denial.¹ For the reasons discussed below, Claimant’s claim is denied.

I. Background

A. The Covered Action

On Redacted the Commission filed the Covered Action² against Redacted
*** (“Company”) and Redacted (collectively, “Defendants”). The Covered Action
alleged that Defendants were involved in Redacted

Redacted

Redacted

Specifically,

Redacted

Redacted

Redacted

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

² The Covered Action was filed in the Redacted (“Court”).

Redacted The Company Redacted
Redacted However, the Company Redacted
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Redacted The Covered Action charged Defendants with Redacted
Redacted In Redacted the Court ordered Redacted to
pay a total of Redacted in disgorgement, prejudgment interest, and civil penalties. The
Court also ordered defendant Redacted to pay Redacted in disgorgement,
prejudgment interest, and civil penalties.

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 filed a timely whistleblower award claim.

B. The Preliminary Determination

On Redacted the CRS issued a Preliminary Determination⁴ recommending that Claimant’s claim be denied on two grounds.⁵

First, the Preliminary Determination recommended that the Commission deny Claimant’s claim because Claimant 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 Securities Exchange Act of 1934 (“Exchange Act”) and Rules 21F-3(a)(2) and 21F-4(b) thereunder because the information was not derived from Claimant’s: (1) “independent knowledge,” as defined under Rule 21F-4(b)(2), but instead was derived entirely from “publicly available sources;” or (2) “independent analysis,” as defined under Rule 21F-4(b)(3), because the information did not include an examination and evaluation of information that “reveals information that is not generally known or available to the public.” The CRS reasoned that Claimant’s information was based on articles, press releases, and Commission filings—all of which were available publicly. Moreover, Claimant’s examination and evaluation of information derived from these publicly available sources did not reveal anything that was not otherwise apparent from reviewing the publicly available information.

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), 17 C.F.R. § 240.21F-12(a).

Second, the Preliminary Determination recommended that the Commission deny Claimant’s claim because Claimant 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 because Claimant’s information was already known to the Commission. The CRS preliminarily determined that Claimant’s information was already known to the staff responsible for the Covered Action (“Staff”) from other sources, including press releases and other tips.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.⁶ In the response, Claimant describes the process through which he/she obtained the information Claimant submitted to the Commission about the Company ^{Redacted} This process included: reviewing and analyzing publicly available information about the Company; ^{Redacted}

^{Redacted} and taking other steps in determining whether ^{Redacted} may have existed based on information taken from publicly available sources such as Company press releases, Commission filings, financial websites, financial blogs, and Google searches.

Claimant argues that the evaluation he/she performed to identify and interpret the information he/she provided to the Commission meets the definition of “independent analysis”. Claimant asserts that his/her evaluation was “beyond what would be reasonably apparent to the Commission from publicly available information” and that Claimant’s analysis “bridged the gap” between the publicly available information and the possible securities violations. Claimant states that the Commission would not have discovered the ^{Redacted} charged in the Covered Action without his/her analysis. Claimant alleges that if his/her claim is denied, the Commission would be implicitly holding that an outsider like Claimant can never receive an award in a ^{Redacted} case and that such a conclusion would have a chilling effect on future ^{Redacted} complaints.

II. Analysis

We deny an award to Claimant 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.⁷ Claimant did not provide the Commission with such information.

⁶ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁷ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

Claimant’s arguments are unavailing. As the Preliminary Determination correctly determined, none of Claimant’s information qualifies as “independent analysis”. Under the Rules, a whistleblower may satisfy the “original information” requirement by providing the Commission with “independent analysis”.⁸ The Rules define “analysis” to mean an “examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.”⁹

We have explained that “independent analysis” requires that the whistleblower “do more than merely point the staff to disparate publicly available information that the whistleblower has assembled, whether or not the staff was previously ‘aware of’ the information.”¹⁰ To qualify as “independent analysis,” a whistleblower’s submission “must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information. In assessing whether this requirement is met, the Commission [] determine[s] . . . whether the violations could have been inferred from the facts available in public sources.”¹¹ In order for a whistleblower to be credited with providing “independent analysis,” the whistleblower’s examination and evaluation should contribute “significant independent information” that “bridges the gap” between the publicly available information and the possible securities violations.¹² “[I]n each case, the touchstone is whether the whistleblower’s submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations.”¹³ Additionally, “non-experts may configure publicly available information in a non-obvious way that reveals patterns indicating possible violations that would not otherwise be inferable from the public information or may engage in highly probative calculations or some other meaningful exercise with the information that may demonstrate the possibility of securities violations.”¹⁴

Here, the Declaration as well as a supplemental declaration (“Supplemental Declaration”) of one of the Enforcement attorneys who was assigned to the Investigation—which we credit—confirmed under penalty of perjury that Claimant’s tip contained information that was in the public domain, including information from Company filings with the Commission and publicly available Company press releases. Claimant’s information was duplicative of information Staff received from other sources, including several tips that the Commission received from members of the public as well as complaints in the public domain. Staff did not have any communications with Claimant before or during the Investigation. Additionally, the Supplemental Declaration

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

⁹ Exchange Act Rule 21F-4(b)(3), 17 C.F.R. § 240.21F-4(b)(3).

¹⁰ Securities Whistleblower Incentives and Protections, 76 FR 34299, 34312 (June 13, 2011).

¹¹ Whistleblower Program Rules, 85 FR 70898, 70927–70928 (Nov. 5, 2020).

¹² *Id.* at 70928.

¹³ *Id.*

¹⁴ *Id.*

confirmed that the information as well as allegations of purported misconduct by the Company that Claimant included within his/her tip to the Commission were based upon readily discernible, publicly available information.

Based upon the record, we therefore conclude that Claimant's information does not qualify as independent analysis. Claimant's information was derived through the review and analysis of publicly available information; however, none of Claimant's analysis regarding ^{Redacted} went beyond what was reasonably apparent to the Commission staff from publicly available information. Claimant's examination and evaluation of the publicly available information about the Company ^{Redacted} did not contribute any "significant independent information" that "bridge[d] the gap" between the publicly available information and the possible securities violations. Nothing about Claimant's information was revelatory in utilizing publicly available information in a way that went beyond the information itself and afforded the Commission with important insights or information about possible violations.¹⁵

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

¹⁵ Despite Claimant's speculative assertions otherwise, nothing about our decision to deny Claimant's claim holds—implicitly or otherwise—that an outsider can never receive an award in ^{Redacted} case. Further, nothing about our decision to deny Claimant's claim is meant to have any chilling effect on future ^{Redacted} complaints. Instead, we have concluded in this instance that Claimant's claim must be denied due to the specific facts and circumstances present here.