

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97396 / April 28, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-52

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 1”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 1 filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant 1’s award claim is denied.¹

I. Background

A. The Covered Action

On Redacted the Commission filed an action against Redacted (collectively, the “Defendants”), charging Defendants with violations of the federal securities laws, including Redacted

¹ The CRS also preliminarily denied the award claim of Claimant 2. That claimant did not seek reconsideration of the Preliminary Determination, and therefore the denial of his/her claim was deemed to be the Final Order of the Commission under Exchange Act Rule 21F-10(f).

Redacted

The Commission alleged violations of

Redacted

Redacted On Redacted the court issued a final judgment ordering Defendants to pay Redacted in disgorgement and prejudgment interest and permanently enjoining Defendants from violating the federal securities laws. On Redacted the court issued an amended final judgment ordering Defendants 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 1 filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Claimant 1’s claim be denied because Claimant 1 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 preliminarily determined that Claimant 1’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 1’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 stated that the TCR Claimant 1 submitted was forwarded to staff on a different investigation, and that none of the other information Claimant 1 provided to the Commission had any impact on the charges in the Covered Action because the information was already known by investigative staff. The CRS stated that the Covered Action and the investigation from which the Covered Action originated (the “Investigation”) both stemmed from information obtained from a witness interviewed in connection with an earlier related investigation. The CRS also stated that Claimant 1 did not provide original information to the Commission. While Claimant 1 had communications with staff assigned to the Investigation, those communications contained only publicly available information and did not contain additional evaluation or insight separate and apart from the publicly available materials. Further, that information was already known to the staff.

C. Claimant 1’s Response to the Preliminary Determination

Claimant 1 submitted a timely written response (the “Response”) contesting the Preliminary Determination.² While stating that he/she did not have contact with staff assigned to the Investigation, Claimant 1 contended that he/she had extensive communications with Commission staff in the Redacted (“Regional Office”) beginning in Redacted including telephone and email communications, regarding the Defendants charged in the

² See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Covered Action. Claimant 1 also argues that he/she had communications with the ^{Redacted} _{Redacted} (“Other Agency”) which may have contributed to the Commission’s Investigation. Claimant 1 notes that “[w]ithout the [Other Agency] taking interest ahead of . . . [the Commission], [the defendant] would no doubt still be in biz [*sic*]. I was the one who brought the [Other Agency] in.” Claimant 1 attached multiple emails with Commission and Other Agency staff, as well as with other individuals, in support of his/her contentions. Claimant 1 also argued that he/she provided certain “original, independent, non public” information to Commission staff in the Regional Office.

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 Additionally, and 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 “commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current examination or 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 For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

As an initial matter, the record shows that Claimant 1’s information did not cause Enforcement staff to open the Investigation. Enforcement staff confirms, in a sworn declaration, which we credit, that the Investigation was opened in ^{Redacted} based upon information derived from a witness interview in another investigation, not based upon any information provided by Claimant 1. Enforcement staff also confirmed, in a supplemental declaration, which we credit,

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 21-F-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.

that the staff assigned to the Investigation did not receive or review any information from the Regional Office or the Other Agency that caused the staff to open the Investigation.

The record also does not show that Claimant 1's information caused Enforcement staff to inquire into different conduct or significantly contributed to the ongoing Investigation. Claimant 1's TCR was forwarded to staff assigned to a different investigation, and as confirmed in the supplemental declaration, Enforcement staff did not receive or review Claimant 1's TCR. And while Claimant 1 emailed certain Commission staff, at least one of whom was assigned to the Investigation, regarding potential misconduct involving the Defendants, the staff assigned to the Investigation who received the emails was already aware of the information in Claimant 1's emails. Further, the record shows that Claimant 1's emails consisted of publicly available information and did not relate to the information that formed the basis of the allegations in the Covered Action. The staff assigned to the Investigation also did not receive any information from the Regional Office or the Other Agency that advanced the Investigation. Lastly, Enforcement staff assigned to the Investigation confirm that they did not receive or review the additional emails Claimant 1 attached to the Response, nor did the staff assigned to the Investigation recall receiving any information from the individuals in the emails submitted by Claimant.⁸

For these reasons, Claimant 1 does not qualify for a whistleblower award.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

⁸ We need not address Claimant 1's argument that the information he/she provided to the Regional Office was "original, independent, [and] non public" because the record indicates that the staff assigned to the Investigation did not receive any information from the Regional Office that caused the staff to open the Investigation or advanced the Investigation. Even if Claimant 1 did provide "original, independent, non public" information to the Regional Office, the record demonstrates that this information did not lead to the success of the Covered Action and thus Claimant 1 is ineligible for an award on that ground alone.