

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99914 / April 8, 2024

WHISTLEBLOWER AWARD PROCEEDING
File No. 2024-12

In the Matter of the Claims for Award

in connection with

Notice of Covered Action

Redacted

Redacted

Notice of Covered Action

Redacted

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination in connection with
Redacted

(“Covered Action 1”) and
Redacted

Redacted

(“Covered Action 2”) (collectively, “Covered Actions”)
Redacted recommending that Redacted (“Claimant 1”) and Redacted (“Claimant 2”) be
denied whistleblower awards for the Covered Actions. Claimant 1 and Claimant 2 filed timely
responses contesting the Preliminary Determination. For the reasons discussed below, Claimant
1’s and Claimant 2’s award claims are denied.¹

I. Background

A. The Redacted Regional Office Investigation

In Redacted Claimant 1 provided information to the Commission’s Division of
Enforcement (“Enforcement”) staff in the Redacted Regional Office (“Regional Office 1 Staff”)

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

Redacted

Redacted To resolve Covered Action 1, the Company agreed to, among other things, pay a civil money penalty as well as disgorgement and prejudgment interest totaling Redacted

C. The Redacted Regional Office Investigation and Covered Action 2

On or about Redacted Enforcement staff in the Redacted Regional Office (“Regional Office 3 Staff”) opened an investigation (“Regional Office 3 Investigation”) as a result of responses to voluntary document requests Regional Office 3 Staff sent to the Company and other Redacted

Redacted The voluntary document requests were sent out as part of an internally generated initiative that started in approximately Redacted As a result of the Regional Office 3 Investigation, on Redacted the Commission brought Covered Action 2, Redacted

Redacted The Commission found that the Company failed to disclose that Redacted

Redacted Covered Action 2 found that the Company willfully violated Redacted

Redacted To resolve Covered Action 2, the Company agreed to, among other things, pay a civil money penalty of Redacted

D. Notices of Covered Action for Covered Action 1 and Covered Action 2

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

E. The Preliminary Determination as to Claimant 1

On Redacted the CRS issued a Preliminary Determination³ recommending that Claimant 1’s claims be denied.⁴ The Preliminary Determination recommended a denial because

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

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

⁴ The record supporting the Preliminary Determination included the declarations of Regional Office 1 Staff (“Regional Office 1 Declaration”), Regional Office 2 Staff (“Regional Office 2 Declaration”), and Regional Office 3 Staff (“Regional Office 3 Declaration”) (collectively, “Declarations”). See Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a).

Claimant 1 did not provide information that led to the successful enforcement of the Covered Actions within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. Claimant 1 did not provide information that caused the opening of the investigations resulting in the Covered Actions. Claimant 1's information did not significantly contribute to the success of the Covered Actions because the majority of the information was unrelated to the subject matter of the Covered Actions; for the few aspects that were related, the information was duplicative of information of which Commission staff was already aware.

F. Claimant 1's Response to the Preliminary Determination

Claimant 1 states that on [Redacted] Claimant 1 submitted information via email to Regional Office 1 Staff (" [Redacted] Email") regarding the Company and its [Redacted] Claimant 1 advised Regional Office 1 Staff that he/she would also be speaking with [Redacted] ("Reporter"). Claimant 1 states that he/she subsequently communicated with the Reporter and provided information about, among other things, the Company's [Redacted] Claimant 1 states that from [Redacted] the Reporter investigated the Company and made direct inquiries to the Company about its [Redacted] Claimant 1 asserts that sometime prior to the end of [Redacted] the Reporter's inquiries caused the Company to initiate an internal investigation. Claimant 1 alleges that the Regional Office 3 Investigation was subsequently opened based, in part, on information the Company provided to the Commission following its internal investigation.

Claimant 1 also states that on [Redacted] Claimant 1 sent an email to Regional Office 1 Staff regarding the Company's [Redacted] (" [Redacted] Email"). On [Redacted] an article written by the Reporter was published, which concerned a Commission investigation into the Company (" [Redacted] Article"). The [Redacted] Article was followed by [Redacted] additional articles in [Redacted] (" [Redacted] Articles"). In [Redacted] Claimant 1 and his/her counsel spoke with Regional Office 1 Staff and Regional Office 3 Staff following Commission staff's request for a call. Claimant 1 alleges that in all, from [Redacted] he/she provided additional information to the Commission regarding the Company's [Redacted]

In light of these alleged facts, Claimant 1 makes four primary arguments about why he/she should receive an award for Covered Action 2. *First*, Claimant 1 argues that he/she was the first source to provide the Commission with information about the Company's [Redacted] [Redacted] which was later charged in Covered Action 2. Claimant 1 alleges that the Commission first learned of the Company's [Redacted] as a result of the [Redacted] [Redacted] Email he/she sent to Regional Office 1 Staff, which was eight months prior to the opening

of the Regional Office 3 Investigation. Claimant 1 states that the Redacted Email contained specific and detailed information about the Company's Redacted that ultimately served as the core basis of Covered Action 2.

Second, Claimant 1 argues that he/she was the "original source" for the Reporter regarding the Company's Redacted and the Redacted Article and the Redacted Articles. Claimant 1 states that Commission staff have acknowledged that staff read the Redacted Article and the Redacted Articles. Claimant 1 asserts that Rule 21F-4(b)(5) gives whistleblowers credit where Commission staff receive information that whistleblowers made available through third parties such as the Reporter.

Third, Claimant 1 alleges that the information that he/she submitted to the Reporter subsequently generated information that triggered and significantly contributed to the Regional Office 3 Investigation and Covered Action 2. Claimant 1 states that after he/she submitted information to the Reporter, the Reporter submitted inquiries to the Company regarding Redacted Claimant 1 alleges that such inquiries caused the Company to launch its internal investigation regarding Redacted issue a document preservation notice, and then Redacted According to Claimant 1, the Company's internal investigation led to the Company's voluntary disclosures to and cooperation with Regional Office 3 Staff.

Fourth, Claimant 1 argues that he/she provided the Commission with substantial ongoing assistance regarding the Company's Redacted Claimant 1 states that he/she provided additional information about the Company's Redacted in the Redacted Email, which was sent to Regional Office 1 Staff. Claimant 1 alleges that similar to the Redacted Email, the Redacted Email was highly relevant to the Regional Office 3 Investigation and mirrored the key findings in Covered Action 2. Claimant 1 states that along with providing the Redacted Email and the Redacted Email, he/she also continued to provide information to the Commission through Redacted that was relevant to Covered Action 2.

Additionally, Claimant 1 argues that he/she should receive an award for Covered Action 1. Claimant 1 alleges that the information he/she provided about the Company's Redacted contributed to Covered Action 1. Claimant 1 contends that the Covered Actions should be treated together when considering Claimant 1's award claims because both Covered Actions arose from the same nucleus of operative facts.

G. The Preliminary Determination as to Claimant 2

On ^{Redacted} the CRS issued a Preliminary Determination⁵ recommending that Claimant 2’s claims be denied.⁶ The Preliminary Determination recommended a denial because Claimant 2 did not provide information that led to the successful enforcement of the Covered Actions within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c). Claimant 2 did not provide information that caused the opening of the investigations, and Claimant 2 did not provide information that significantly contributed to the Covered Actions.

H. Claimant 2’s Response to the Preliminary Determination

In response, Claimant 2 makes several arguments. *First*, Claimant 2 alleges that ^{Redacted} ^{Redacted} he/she shared extensive information with the Commission ^{Redacted} during ^{Redacted} and during a meeting with Regional Office 1 Staff ^{Redacted} in ^{Redacted} Claimant 2 states that the information he/she shared during ^{Redacted} ^{Redacted} was comprehensive and included information about the relationship between the ^{Redacted} Company and

Second, Claimant 2 alleges that Regional Office 1 Staff informed Claimant 2 in ^{***} ^{***} that the information he/she shared had value and was fulsome. Claimant 2 alleges that Regional Office 1 Staff perceived his/her information as helpful because some of it was new, and other information corroborated information that the Commission already possessed.

Third, Claimant 2 alleges that during his/her ^{Redacted} meeting with Regional Office 1 Staff, staff specifically asked Claimant 2 not to share with the Company ^{Redacted} that Claimant 2 had spoken to the Commission. Claimant 2 alleges that this instruction affected ^{Redacted} Claimant 2 states that ^{Redacted} ^{Redacted} Claimant 2 alleges that ^{Redacted} ^{Redacted} ^{Redacted}

⁵ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁶ The record supporting the Preliminary Determination included the Declarations. See Exchange Act Rule 21F-12(a), 17 C.F.R. § 240.21F-12(a).

Redacted

Redacted

Redacted

Fourth, Claimant 2 alleges that

Redacted

Redacted

Redacted

As such, Claimant 2 believes that the existence of witnesses who were willing to testify against the Company such as Claimant 2 provided the Commission with leverage and likely hastened the settlements of the Covered Actions.

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.⁸ 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;⁹ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”¹⁰

A. Claimant 1

We deny an award to Claimant 1. The record demonstrates that Claimant 1 did not provide information that led to the enforcement of the Covered Actions. According to the Commission’s Tips, Complaints, and Referrals System (“TCR System”), Claimant 1’s tip was reviewed and considered by Regional Office 1 Staff who was investigating other conduct by the Company unrelated to the subject matter of the Regional Office 2 Investigation and the Regional Office 3 Investigation that resulted in the Covered Actions.

We credit the Declarations, provided under penalty of perjury, in support of our conclusion to deny Claimant 1’s award claims. According to the Regional Office 1 Declaration, although Claimant 1’s information caused Regional Office 1 Staff to initiate the Regional Office 1 Investigation, the investigation was closed due to insufficient evidence to support an enforcement action. Regional Office 1 Staff did not work on the Regional Office 2 Investigation or the Regional Office 3 Investigation.

According to the Regional Office 2 Declaration, the Regional Office 2 Investigation was not opened based on Claimant 1’s tip or any other information provided by Claimant 1. Instead, in or around ^{Redacted} Regional Office 2 Staff opened the Regional Office 2 Investigation

⁸ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁹ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹⁰ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

following an internal sweep conducted by Commission staff. Claimant 1’s tip did not relate to the subject matter of the Regional Office 2 Investigation, and it was not the impetus of the Regional Office 2 Investigation. Regional Office 2 Staff does not recall receiving any information provided by Claimant 1 before or during the Regional Office 2 Investigation. None of Claimant 1’s information was used in or had any impact on the findings by the Commission in Covered Action 1.

According to the Regional Office 3 Declaration, Claimant 1’s tip was not the impetus of the Regional Office 3 Investigation. None of Claimant 1’s information helped advance the Regional Office 3 Investigation, and Claimant 1’s information did not contribute to the findings by the Commission in Covered Action 2. Instead, on or about ^{Redacted} Regional Office 3 Staff opened the Regional Office 3 Investigation as a result of responses to voluntary document requests Regional Office 3 Staff sent to the Company and other ^{Redacted}. The voluntary document requests were sent out as part of an internally generated initiative that started in approximately ^{Redacted}.

Thus, based on the factual record, there is no basis to grant Claimant 1 an award for the Covered Actions. None of Claimant 1’s arguments change this conclusion.

First, Claimant 1’s reliance on the ^{Redacted} Email—which was only addressed and sent to Regional Office 1 Staff—as evidence that his/her information initiated and subsequently advanced the Regional Office 3 Investigation and Covered Action 2 is erroneous. According to the supplemental declaration of the same Regional Office 3 Staff attorney who provided the Regional Office 3 Declaration (“Regional Office 3 Supplemental Declaration”), provided under penalty of perjury, and which we also credit, the ^{Redacted} Email and the information contained therein did not play any role in the opening of the Regional Office 3 Investigation or otherwise impact the investigation. Additionally, the ^{Redacted} Email and the information contained therein was not used in, nor had any impact on, the charges brought by the Commission in Covered Action 2.

Second, Claimant 1’s contention that he/she was the “original source” for the Reporter regarding the Company’s ^{Redacted} and the subsequently published ^{Redacted} ^{***} Article and ^{Redacted} Articles does not entitle him/her to an award for Covered Action 2. Rule 21F-4(b)(5) provides that for purposes of satisfying the “original information” requirement, the Commission considers a claimant to be “an original source of the same information” that the Commission obtains from another source “if the information satisfies the definition of original information and the other source obtained the information from” the

claimant or his/her representative.¹¹ Here, according to the Regional Office 3 Declaration, the information contained within the ^{Redacted} Article and the ^{Redacted} Articles was already known by Regional Office 3 Staff before the articles were published. The Regional Office 3 Supplemental Declaration further confirms that the ^{Redacted} Article and the ^{Redacted} Articles did not contain any new information that advanced or impacted the Regional Office 3 Investigation or Covered Action 2. Accordingly, because the information in the ^{Redacted} Article and the ^{Redacted} Articles was not new, it was not “original information” pursuant to Rule 21F-4(b). Claimant 1’s contention that he/she was the original source of the ^{Redacted} Article and the ^{Redacted} Articles is immaterial because the information in those articles does not satisfy either the “original information” or the “led to” requirements under the whistleblower program rules.

Third, Claimant 1’s arguments regarding how the information he/she provided to the Reporter and the Reporter’s subsequent work precipitated a number of events involving the Company—including the initiation of the Company’s internal investigation and its ensuing voluntary disclosures to and cooperation with Regional Office 3 Staff—are misplaced.¹² Such arguments are inapposite to the determination of whether the information that Claimant 1 directly submitted to the Commission either: (1) caused Regional Office 3 Staff to open the Regional Office 3 Investigation or inquire concerning different conduct; or (2) significantly contributed to the success of Covered Action 2, as required in relevant part by Rules 21F-4(c)(1) and (2). The record, including the Regional Office 3 Declaration and the Regional Office 3 Supplemental Declaration, confirms that Claimant 1 did not provide the Commission with any such information. Claimant 1 thus does not satisfy Rules 21F-4(c)(1) or (2), contrary to Claimant 1’s assertions otherwise.¹³

¹¹ See Exchange Act Rule 21F-4(b)(5), 17 C.F.R. § 240.21F-4(b)(5) (“The Commission will consider you to be an original source of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from you or your representative.”).

¹² Claimant 1 observes that within Covered Action 2, the Commission recognized that the Company ^{Redacted}
^{Redacted}
^{Redacted}

Covered Action 2 at ***

¹³ Claimant 1 has not raised an argument that he/she should receive an award under Rule 21F-4(c)(3). Nonetheless, Claimant 1 does not satisfy Rule 21F-4(c)(3). That Rule provides, in relevant part, that if “[y]ou [*i.e.*, a whistleblower claimant] reported original information through an entity’s internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time you reported them to the Commission,” and the entity later provided to the Commission such information or the results of an “investigation initiated in whole or in part in response to information you reported to the entity,” and “the information the entity provided to the Commission satisfies either” Rule 21F-4(c)(1) or (2), then the claimant would be deemed to have provided “original information” to the Commission. Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3). Here, the Reporter’s direct inquiries to the Company regarding ^{Redacted} do not constitute internal reporting to an entity by a claimant whistleblower, as contemplated in Rule 21F-4(c)(3).

Fourth, Claimant 1 argues that he/she provided the Commission with substantial ongoing assistance regarding the Company's ^{Redacted} including submitting the ^{Redacted} Email and the ^{Redacted} Email, which mirrored key findings in Covered Action 2. However, the ^{Redacted} Email and the ^{Redacted} Email were both addressed and sent to only Regional Office 1 Staff, who was investigating other conduct by the Company unrelated to the subject matter of the Regional Office 3 Investigation that resulted in Covered Action 2. Regional Office 1 Staff was not involved in the Regional Office 3 Investigation or Covered Action 2. The Regional Office 3 Supplemental Declaration confirms that the ^{Redacted} ^{***} Email, the ^{Redacted} Email, and the information contained therein did not play any role in the opening of the Regional Office 3 Investigation or otherwise impact the Regional Office 3 Investigation or Covered Action 2. Specifically, according to the Regional Office 3 Supplemental Declaration, although Regional Office 1 Staff provided Regional Office 3 Staff with information that originated from Claimant 1, such information was either already known by Regional Office 3 Staff as a result of its investigative efforts or was not relevant to the Regional Office 3 Investigation. Regional Office 3 Staff first learned of Claimant 1 and his/her information from Regional Office 1 Staff in or around ^{Redacted} at that time, Regional Office 3 Staff was already in settlement talks with the Company to resolve the Regional Office 3 Investigation.

Finally, Claimant 1's argument that his/her information contributed to Covered Action 1 is contradicted by the Regional Office 2 Declaration, which confirms that Regional Office 2 Staff did not receive any information provided by Claimant 1 before or during the Regional Office 2 Investigation. Because none of Claimant 1's information was used in or had any impact on the findings by the Commission in Covered Action 1, Claimant 1 cannot receive any award in connection with Covered Action 1.¹⁴

B. Claimant 2

We deny an award to Claimant 2. The record demonstrates that Claimant 2 did not provide information that led to the successful enforcement of the Covered Actions. According to the TCR System, Claimant 2's tip was reviewed and considered by Regional Office 1 Staff who was investigating other conduct by the Company unrelated to the subject matter of the Regional Office 2 Investigation and the Regional Office 3 Investigation that resulted in the Covered Actions.

¹⁴ Because Claimant 1 does not qualify for awards for either Covered Action 1 or Covered Action 2, we do not need to reach a determination as to whether Covered Action 1 and Covered Action 2 should be treated as one Covered Action because they arose from the same nucleus of operative facts, as argued by Claimant 1.

We credit the Declarations, provided under penalty of perjury, in support of our conclusion to deny Claimant 2's award claims. According to the Regional Office 1 Declaration, during the Regional Office 1 Investigation, on or about ^{Redacted} Regional Office 1 Staff interviewed Claimant 2. Following the interview with Regional Office 1 Staff, Claimant 2 shared additional information by email with Regional Office 1 Staff. On or about ^{Redacted}

*** Claimant 2 filed his/her tip with the Commission. Although Claimant 2's tip was directly related to the Regional Office 1 Investigation, the tip was not the source of the Regional Office 1 Investigation. On ^{Redacted} the Regional Office 1 Investigation was closed due to insufficient evidence to support an enforcement action. Regional Office 1 Staff responsible for the Regional Office 1 Investigation did not work on the Regional Office 2 Investigation or the Regional Office 3 Investigation that resulted in the Covered Actions.

According to the Regional Office 2 Staff Declaration and the Regional Office 3 Staff Declaration, neither the Regional Office 2 Investigation nor the Regional Office 3 Investigation was opened based on Claimant 2's tip or any other information provided by Claimant 2. Claimant 2's tip did not relate to the subject matter of the Regional Office 2 Investigation or the Regional Office 3 Investigation, and it was not the impetus for the Regional Office 2 Investigation or the Regional Office 3 Investigation. Regional Office 2 Staff and Regional Office 3 Staff do not recall receiving any information provided by Claimant 2 before or during the Regional Office 2 Investigation or the Regional Office 3 Investigation. None of Claimant 2's information was used in or had any impact on the findings by the Commission in the Covered Actions.

Given these facts, there is no basis to grant Claimant 2 an award for the Covered Actions. Claimant 2's arguments do not change this conclusion.

First, the purported ^{Redacted} referenced by Claimant 2 was not relevant to any of the investigations that resulted in the Covered Actions. The Regional Office 2 Investigation was opened in or around ^{Redacted} following an internal sweep conducted by Commission staff. The Regional Office 3 Investigation was opened on or about ^{Redacted} ^{Redacted} as a result of responses to voluntary document requests Regional Office 3 Staff sent to the Company and other ^{Redacted}. The voluntary document requests were sent out as part of an internally generated initiative that started in approximately ^{Redacted} 15

¹⁵ Additionally, the first time that Claimant 2 alleged that he/she provided information in connection with the ^{Redacted} was within Claimant 2's response to the Preliminary Determination. Claimant 2 did not reference the ^{Redacted} in either his/her TCR—which states that Claimant 2 first became aware of misconduct in ^{Redacted}—or in Claimant 2's application for a whistleblower award.

Second, Claimant 2’s allegation that his/her information was perceived as being helpful by Regional Office 1 Staff is not pertinent to a determination of Claimant 2’s award claims with respect to the Covered Actions. Alleged statements made by Commission attorneys do not constitute legal conclusions regarding claimants’ eligibility for whistleblower awards. Moreover, the record confirms that contrary to Claimant 2’s allegations, his/her information was not helpful to either Covered Action 1 or Covered Action 2.

Third, Claimant 2’s statement that his/her failure to Redacted
 Redacted
 is inapposite to the determination of Claimant 2’s award claims.¹⁶ The factual record demonstrates that Claimant 2 did not provide information that led to the successful enforcement of the Covered Actions.

Finally, there is no support in the record for Claimant 2’s argument that the existence of a purported witness like Claimant 2 provided the Commission with leverage and hastened the Company’s agreement to settle the Covered Actions. As confirmed by Regional Office 2 Staff and Regional Office 3 Staff, Claimant 2’s information was not related to the subject matter of the Regional Office 2 Investigation or the Regional Office 3 Investigation, and his/her information was not the impetus for either investigation or the Covered Actions.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

¹⁶ Because Claimant 2 is not eligible for an award, the factors under Rule 21F-6(a) for increasing a whistleblower award—including hardships experienced by a whistleblower, pursuant 21F-6(a)(2)(vi)—are not relevant to the determination to deny Claimant 2’s claim.