

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92357 / July 9, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-69

In the Matter of the Claim for Award

in connection with

Redacted

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

I. Background

A. The Covered Action

Redacted The Commission opened the investigation that culminated in the Covered Action in Redacted (the “Investigation”) based on the staff’s review of the financial statements of Redacted (“Company”) and other publicly available information about the Company. The Investigation primarily focused on the potential fraudulent Redacted

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Claimant submitted Claimant’s tip to the Commission in Redacted – more than two and a half years after the Investigation was opened. In the tip, Claimant alleged that Redacted

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Claimant also asserted that Redacted

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*** . Claimant points out that Claimant “actively participated as an [Other Agency] informant” during and after Claimant’s Redacted Redacted

According to Claimant, Claimant “provided multiple documents (too numerous to list)” and “communicated to the [Other Agency] multiple times . . . about the Redacted , and other fraud” that was ongoing at the Company. Claimant maintains that it was Claimant’s understanding that the Other Agency was sharing all this information with the Commission and urges that “the Office of the Whistleblower should speak with the [Other Agency] involved in this investigation . . . to assess the value of [Claimant’s] help.”

II. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must have “voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action.”⁵ As relevant here, information will be deemed to have led to a successful enforcement action if it was “sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current . . . investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information.”⁶ Alternatively, information will be deemed to have led to a successful enforcement action where the information was “about conduct that was already under examination or investigation by the Commission” and the “submission significantly contributed to the success of the action.”⁷ 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.⁸ 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.⁹ As discussed below, Claimant’s information does not satisfy either prong of the “led to” requirement, as the information did not cause the opening of the investigation that led to the Covered Action, nor did it significantly contribute to the success of the Covered Action.¹⁰

⁵ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁶ Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁷ Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁸ 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).

⁹ Exchange Act Rel. No. 85412 at 8-9.

¹⁰ We do not read Claimant’s response as raising any argument that Claimant’s information caused the staff to commence an examination or to inquire into different conduct as part of an existing examination or investigation. *See* Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

Claimant, as noted, submitted a tip to the Commission approximately two and a half years after the Investigation was opened; thus it did not cause the staff to open the Investigation that resulted in the Covered Action. Claimant does not dispute this.

Since the Investigation had already been opened by the time Claimant submitted a tip, the submission can only be deemed to have led to the success of the Covered Action if it “significantly contributed to the success of the action.”¹¹ We find, based on the evidence in the record, including a declaration from the responsible investigative staff, which we credit,¹² that Claimant’s information did not make a substantial and important contribution to the success of the Covered Action by, for example, allowing the Commission to bring the Covered Action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities. Rather, the responsible investigative staff determined, based not only on Claimant’s submission, but also on communications with other law enforcement agencies with whom Claimant was cooperating, that Claimant’s information primarily related to

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, which was unrelated to what was being investigated by the staff (***

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). As the

Investigation staff stated, “[w]hile [Claimant] provided limited information regarding the

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under investigation, the information was vague and non-specific and it did not contribute to the . . . Investigation.” This limited information, the staff noted, “basically stated

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that [Claimant] heard

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, without providing any other detail or context.”

Moreover, by the time the staff received Claimant’s tip, it was already aware of this information from other sources. The Investigation staff concluded that “[n]one of the information provided by [Claimant] helped advance the . . . Investigation and [n]one of [Claimant]’s information was used in, or had any impact, on the charges brought by the Commission” in the Covered Action. Accordingly, Claimant did not provide information to the Commission that led to the success of the Covered Action and, therefore, Claimant is not eligible to receive a whistleblower award.

¹¹ Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹² The whistleblower rules contemplate that the record upon which an award determination is made shall consist of a sworn declaration provided by the relevant Commission staff, in addition to the publicly available materials related to the Covered Action, the claimant’s tip and the claimant’s award application. *See* Exchange Act Rule 21F-12(a). Here, the Claimant requested and was provided the record upon which the award determination was based, which included a declaration from the relevant investigative staff. As such, Claimant’s argument that the record was insufficient or incomplete under the law is contrary to the plain language of the Commission’s whistleblower rules. Claimants are not entitled to receive additional materials outside those enumerated in Rule 21F-12(a), as any such additional materials were not used as a basis for the award determination.

III. Conclusion

Accordingly, it is ORDERED that Claimant's whistleblower award claim be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary