

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94399 / March 11, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-39

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination in connection with the above-captioned Covered Action (the “Covered Action”) recommending that Redacted (“Claimant 1”) receive an award of Redacted percent (%) of amounts collected in the Covered Action, and that the award claim submitted by Redacted (“Claimant 2”) be denied.¹ Claimant 1 did not submit a response contesting the Preliminary Determination, but Claimant 2 filed a timely response contesting the Preliminary Determination. Redacted

As such, the CRS now recommends that Claimant 1 receive an award of approximately \$38,000, equal to % of amounts collected in the Covered Action and that Claimant 2’s award claim be denied. For the reasons discussed below, the CRS’s recommendation is adopted with respect to both Claimant 1 and Claimant 2.

¹ The Preliminary Determination of the CRS also recommended denying the award claim of a third claimant, who did not file a response. Thus, the Preliminary Determination with respect to the third claimant has become the Final Order of the Commission pursuant to Rule 21F-10(f) under the Securities Exchange Act of 1934 (“Exchange Act”), 17 C.F.R. § 240.21F-10(f).

I. Background

A. The Covered Action

On ^{Redacted} the Commission filed an enforcement action in federal district court charging multiple defendants with violations of ^{Redacted}

^{Redacted} On ^{Redacted} the district court entered a final judgment in favor of the Commission that ordered ^{Redacted} the ^{Redacted} defendants to pay disgorgement, prejudgment interest and civil penalties. ^{Redacted}, the district court entered a final judgment as to the remaining defendants. The total disgorgement and civil penalties ordered in this matter amounted to ^{Redacted}

On ^{Redacted} the Office of the Whistleblower posted Notice of Covered Action ^{Redacted} on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days, by ^{Redacted}² Claimants 1 and 2 each filed a timely whistleblower award claim.

B. The Preliminary Determination

On ^{Redacted} the CRS issued a Preliminary Determination³ recommending that Claimant 1 receive an award equal to ^{Redacted} percent (^{Redacted} %) of amounts collected in the Covered Action. The CRS also preliminarily determined to recommend that Claimant 2's claim be denied because the information provided was not original pursuant to Rule 21F-4(b) of the Exchange Act. The CRS made this finding for two reasons. *First*, Commission staff had been pursuing an investigation of ^{Redacted} in this matter for nearly two years prior to receiving Claimant 2's tip, and the information Claimant 2 provided was already known to the Commission from another source by the time it was received. *Second*, Claimant 2's information was not based on Claimant 2's independent knowledge or analysis because Claimant 2 was an employee whose principal duties involved compliance-related responsibilities as provided by Exchange Act Rule 21F-4(b)(4)(iii)(B). The Preliminary Determination also found that Claimant 2 did not fall within any of the exceptions to the compliance officer eligibility exclusion.

C. Claimant 2's Response to the Preliminary Determination

On or about ^{Redacted}, Claimant 2 submitted a timely written response contesting the Preliminary Determination.⁴ Claimant 2 contends that the information contained in Claimant 2's ^{Redacted} tip, submitted via the Commission's on-line TCR portal, was the basis upon which the Commission opened the investigation that led to the Covered Action. Claimant 2 also asserts that, in connection with Claimant 2's

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

employment as a compliance officer at ^{Redacted}
^{Redacted} Claimant 2 was the investigative staff's primary point
of contact at ^{Redacted} and that they provided hundreds of pages of information
from ^{Redacted} to the Commission's staff. Claimant 2's response does not deny
that they were an employee whose primary responsibilities were compliance-related; nor
does Claimant 2 argue that any exceptions to the compliance officer exclusion apply.

II. Analysis

A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.⁵ Specifically, Claimant 1's information significantly contributed to the success of the Covered Action because it played a key role in advancing the staff's investigation and provided the basis for some of the allegations in the Commission's complaint.

Redacted

^{Redacted} Claimant 1 was not involved in the violations, but rather was a victim of the fraudulent conduct. Claimant 1 did not unreasonably delay in reporting the violations to the Commission. The record reflects that Claimant 1, whose company had ^{Redacted} became aware that ^{Redacted} would not honor its contractual obligation to ^{Redacted} and after some period of attempting to resolve the issue, became concerned about the possibility of fraud and made a detailed and credible report to the Commission. Claimant 1 also provided substantial assistance by providing new and helpful information and useful documents concerning fraudulent conduct and met with investigative staff, including the provision of investigative testimony.

⁵ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

Redacted

B. Claimant 2

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 To qualify as “original information” under the whistleblower rules, a submission must be, *inter alia*, (1) derived from the submitter’s “independent knowledge” or “independent analysis;”⁸ and (2) not already known to the Commission from any other source.⁹

Claimant 2 argues that they are eligible for an award under this standard because they provided information that directly led the Commission to open the investigation that ultimately resulted in the Covered Action. That assertion is contradicted by the administrative record. Claimant 2’s tip concerning possible fraud in connection with “
Redacted” was submitted on “
Redacted”, which was almost two years after the Commission staff had opened the investigation. As a result, Claimant 2’s tip could not have led to the opening of the investigation. In addition, the record demonstrates that the Commission staff had learned of possible fraud in connection with the “
Redacted” in “
Redacted” from other sources, and as a result, Claimant 2’s tip fails to satisfy the requirement that the information be “original,” insofar as the information provided in Claimant 2’s tip was already known to the staff from another, earlier source.

Additionally, at the time Claimant 2 submitted the tip, their principal duties involved compliance at the “
Redacted” where they were employed. Specifically, among their job duties was facilitating their employer’s compliance with a specific statutory obligation to file reports of certain “
Redacted” information with the federal government in a timely fashion. Claimant 2 obtained all of the information and documents that they provided to the staff (both in the initial tip and subsequently) only through the performance of their duty to facilitate their employer’s compliance with those statutory reporting requirements. Because Claimant 2 obtained the information and documents for the purpose of ensuring their employer’s compliance with this statutory reporting requirement, they acquired the information in consequence of their performance of compliance-related job duties for the purposes of Rule 21F-4(b)(4)(iii)(B)’s exclusion.¹⁰ Accordingly, Claimant 2’s information is excluded from their use in a whistleblower submission unless one of the exceptions set forth in Rule

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

⁸ “Independent knowledge” is “factual information in [the submitter’s] possession that is not derived from publicly available sources” and which may have been gained from the submitter’s “experiences, communications and observations” in their “business or social interactions.” “Independent analysis” means one’s own “examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.” Rule 21F-4(b)(2).

⁹ Rule 21F-4(b)(1), 17 C.F.R. § 240.21F-4(b)(1).

¹⁰ Rule 21F-4(b)(4)(iii)(B) provides that information will not be treated as “independent knowledge” or “independent analysis” if it is obtained by an individual “because” they were “[a]n employee whose principal duties involve compliance or internal audit responsibilities.” The Commission has stated that one of the purposes of this exclusion was to prevent employees from having an incentive to “‘front run[]’... processes that are important components of effective company compliance programs.” *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34316 (June 13, 2011).

21F-4(b)(4)(v) applies.¹¹ None of the exceptions apply to Claimant 2, nor does Claimant 2 argue that any apply here.

We therefore conclude that the information Claimant 2 provided was not original pursuant to Rule 21F-4(b) of the Exchange Act, and that, as a result, Claimant 2 is ineligible for an award with respect to the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award of *** percent (*** %) of the monetary sanctions collected or to be collected in the Covered Action. It is further ORDERED that Claimant 2's whistleblower award application be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ Pursuant to Rule 21F-4(b)(4)(v), a compliance officer may be eligible for an award if one of the following exceptions applies: (A) the individual has "a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors;" (B) the individual has "a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct;" or (C) at least 120 days have elapsed since the individual reported the information internally to the company's audit committee, chief legal officer, chief compliance officer, or to their supervisor, or since the individual received the information, if they received it under circumstances indicating that the audit committee, chief legal officer, chief compliance officer, or their supervisor was already aware of the information.