

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95712 / September 9, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-80

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

I. Background

A. The Covered Action

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings in the Covered Action, charging Redacted (the “Company”) with violations of Redacted The Commission order stated that Redacted

Redacted The Company agreed to settle the charges and to pay Redacted in disgorgement, Redacted in judgment interest, and a civil money penalty of Redacted

¹ The CRS also preliminarily denied the award claims of one other claimant. That claimant did not seek reconsideration of the Preliminary Determinations, and therefore the denial of that claim was deemed to be the Final Order of the Commission under Exchange Act Rule 21F-10(f).

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 filed a timely whistleblower award claim.

B. The Preliminary Determination

On ^{Redacted} the CRS issued a Preliminary Determination recommending that Claimant’s claim be denied because Claimant 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 of 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS concluded that Claimant’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’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 concluded that Claimant’s information was initially forwarded to Enforcement staff investigating the ^{Redacted} however, because Claimant’s information focused on ^{Redacted} ^{Redacted} the staff investigating the ^{Redacted} forwarded Claimant’s information to other Enforcement staff in the Commission’s New York Regional Office (“NYRO”) assigned to a separate investigation. The investigation that led to the Covered Action began in ^{Redacted} and was based on information developed in another investigation. The CRS determined that none of Claimant’s information contributed to or had any impact on the charges brought in the Covered Action.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.² Claimant principally argues that in ^{Redacted} he/she provided “detailed information on the ^{Redacted} to Enforcement staff and states that this information “directly benefited” the staff’s work on the Covered Action. Claimant attached several emails to his/her Response as examples of the information Claimant shared, and also implied that the origin of the staff’s knowledge of the ^{Redacted} at issue in the Covered Action was derived from Claimant’s information. Claimant also argues that he/she provided specific and detailed information to NYRO staff, and that the NYRO staff may have shared this information with others at the Commission thereby assisting with the Covered Action. Finally, Claimant appears to also contend that his/her information regarding ^{Redacted} helped the Investigation in some way.

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

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

enforcement of a covered action.³ As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered 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;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

Claimant does not qualify for an award under either of the above-described provisions. First, the record demonstrates that the Commission’s investigation which led to the Covered Action (the “Investigation”) was opened based upon information developed during a separate investigation into the Company. Claimant’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant’s information did not cause the staff to inquire into different conduct or significantly contribute to the Investigation. Enforcement staff assigned to the Investigation confirmed that Claimant’s information, which concerned the issue of ^{Redacted} did not relate to the matters at issue in the ^{Redacted} Investigation or the charges in the Covered Action. Further, staff confirmed that the ^{Redacted} Claimant raised in the Response were already known to the staff before Claimant submitted his/her information. Staff assigned to the Investigation also confirmed that the Commission’s NYRO staff did not share any additional information received from Claimant. The emails Claimant attached to the Response also do not bolster his/her argument: the staff had already confirmed that Claimant’s information from ^{Redacted} did not relate to the Investigation or the charges in the Covered Action. Based upon these facts, Claimant’s information did not cause the staff to inquire into different conduct or significantly contribute to the Investigation.⁸

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 21F-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.

⁷ Exchange Act Rel. No. 85412 at 8-9.

⁸ Claimant also asks that the Commission determine if the Company was

Redacted

For these reasons, Claimant is not entitled to an award.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

^{Redacted} There is no evidence in the record on this point, and even if such information were available, we do not see its relevance. The staff has confirmed that Claimant's information did not cause the opening of the Investigation or assist it in any way.