

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 98655 / September 29, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-84

In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

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Redacted

Notice of Covered Action

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claims submitted by ^{Redacted} (“Claimant 1”) and ^{Redacted} (“Claimant 4”) in connection with the above-referenced covered actions (the “Covered Actions”). Claimant 1 and Claimant 4 each filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant 1 and Claimant 4’s award claims are denied.¹

¹ The CRS also preliminarily determined to recommend that the award applications of two other claimants be denied. Neither of these claimants submitted a request for reconsideration and, as such, the Preliminary Determinations with respect to their award claims became the Final Order of the Commission on ^{Redacted}, pursuant to Rule 21F-10(f).

I. Background

A. The Covered Actions

On [Redacted], the Commission filed a complaint against [Redacted] (“Company”), [Redacted] (collectively, the “Defendants”) in connection with [Redacted]. According to the Complaint, [Redacted].

[Redacted], the Commission filed a complaint against [Redacted]. The complaint alleged that [Redacted].

The Court subsequently entered final judgments against all of the Defendants, ordering [Redacted] to pay disgorgement and civil penalties totaling over [Redacted].

On [Redacted] and [Redacted] OWB posted Notice for the Covered Action [Redacted] in connection with the [Redacted] on the Commission’s public website regarding inviting claimants to submit whistleblower award applications within 90 days. Claimant 1 and Claimant 4 filed timely whistleblower award claims in connection with the Covered Actions.

B. The Preliminary Determination

On [Redacted], the CRS issued a preliminary determination recommending that Claimant 1’s and Claimant 4’s claims be preliminarily denied.² The CRS determined that

² The preliminary determination noted that to the extent Claimants have applied for an award in a related action,

Claimant 1 and Claimant 4 did not provide information that led to the successful enforcement of the above-referenced 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 because any information provided did not, under Rule 21F-4(c)(1) of the Exchange Act: (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 claimants' information; 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 preliminary determination noted that neither Claimant 1 nor Claimant 4 provided information that caused the Covered Actions investigation to open. Investigative staff responsible for the Covered Actions opened the investigation prior to receiving information from Claimant 1 and Claimant 4. Nor did Claimant 1 nor Claimant 4 significantly contribute to either of the Covered Actions. While responsible investigative staff received information from Claimant 1, none of the information was used in, or had any impact on, the charges brought by the Commission in the Covered Actions. Investigative staff responsible for the Covered Actions never received any information from, or had any communications with, Claimant 4.

Claimant 1 and Claimant 4 each submitted a timely written response contesting the preliminary determination.³

C. Responses to the Preliminary Determination

i. Claimant 1's Response to the Preliminary Determination

In Claimant 1's response to the preliminary determination ("Claimant 1 Response"), Claimant 1 argues that he/she is entitled to an award because: (1) he/she significantly contributed to the Covered Actions because his/her information allowed the SEC to bring the Covered Actions in significantly less time and with significantly fewer resources; (2) prior SEC Orders confirm that he/she "significantly contributed" to the success of the Covered Actions and, in connection with this argument, argues that his/her willingness to provide an affidavit was a significant contribution; (3) there is a close nexus between his/her information and certain charges in the SEC's successful Covered Actions, and he/she provided "new" information after submitting his/her tip; and (4) the goals of the whistleblower program militate in favor of granting him/her an award.

ii. Claimant 4's Response to the Preliminary Determination

In Claimant 4's response to the preliminary determination ("Claimant 4 Response"), Claimant 4 principally focuses on a TCR that he/she believes could have contributed to the

because Claimants are not eligible for an award in an SEC Covered Action, they are not eligible for an award in connection with any related action. *See* 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a); *see also* Order Determining Whistleblower Award Claim, Release No. 34-86902 (Sept. 9, 2019).

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

Covered Actions. Claimant 4 wrote, he/she is “contesting on the basis that the review staff at the Office of the Whistleblower was negligent by failing to forward my information to the investigative staff. By not sending valuable information to the appropriate staff, the SEC failed in its mission to ensure the integrity of the whistleblower program.” Liberally construed, the Claimant 4 Response appears to argue that since his/her TCR would have contributed to the success of the Covered Actions had the staff forwarded it to the relevant investigation, he/she deserves at least a 10 percent award.

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.⁴ Among other things, to be considered original information the submission must be provided to the Commission for the first time after July 21, 2010.⁵ 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 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;⁶ or (ii) the conduct was already under examination or investigation, and the original information “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

A. Claimant 1

Claimant 1’s information does not merit a whistleblower award for the Covered Actions. As an initial matter, Claimant 1’s information did not cause the staff to open the investigation that led to the Covered Actions (the “Investigation”). As noted in the initial declaration from one

⁴ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁵ See Exchange Act Rule 21F-4(b)(1)(iv), 17 C.F.R. § 240.21F-4(b)(1)(iv).

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

⁷ See Exchange Act Rule 21-F-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.

⁹ Exchange Act Rel. No. 85412 at 8-9.

of the primary Enforcement staff attorneys assigned to the Investigation (“Initial Declaration”), which we credit, Investigative staff opened the Investigation over two months before Claimant 1 submitted his/her tip.

The record also does not show that Claimant 1’s information caused the staff to inquire into different conduct or significantly contributed to the ongoing Investigation. At the outset, we note that Initial Declaration indicated that Claimant 1’s information was not useful to the ^{Redacted} or the ^{Redacted}. The arguments Claimant 1 puts forth in his/her response to the preliminary determination are not persuasive.

First, Claimant 1 argues that he/she significantly contributed to the Covered Actions because his/her information allowed the SEC to bring the Covered Actions in significantly less time and with significantly fewer resources. To support this argument, Claimant 1 included a “detailed timeline” to imply that his/her information allowed the Commission to “bring an enforcement action in significantly less time.” In this vein, Claimant 1 writes, “[w]ithin 22 days of receiving [Claimant 1’s] tip, the SEC converted the [Company] MUI to an investigation, during which [Claimant 1] and ^{Redacted} counsel had nearly daily interactions with the SEC, and then brought an action against [the Company] 12 days thereafter.” (bold in original). Claimant 1 believes his/her information caused the Commission to “act more quickly” with respect to the Covered Actions. Claimant 1’s argument relies heavily on the timing of events to circumstantially demonstrate that he/she saved Commission time and resources.

We find that there is insufficient evidence in the record to show that Claimant 1’s information saved the Commission time and resources by allowing the Commission to “act more quickly.” As stated in the Initial Declaration, even though the staff did speak with Claimant 1, the staff did not find his/her information to be useful in the Covered Actions. In a supplemental declaration from Enforcement staff (“Supplemental Declaration”), staff noted that Claimant 1’s information did not help expedite the investigation that led to the Covered Actions. Moreover, Enforcement staff noted that it had already obtained a significant amount of information from other sources by the time Claimant 1 came forward in ^{Redacted}.

Second, Claimant 1 argues that prior Commission Orders confirm that he/she “significantly contributed” to the success of the Covered Actions. In making this argument, Claimant 1 cites a Commission Order and suggests that this Order confirms that Claimant 1 “significantly contributed” to the Covered Actions at hand.¹⁰ Claimant 1 notes that, “[in this] Order, the whistleblower received an award merely for providing the name of a potential witness.” Claimant 1 suggests that he/she provided significantly more information and assistance to the Commission in the Covered Actions in comparison to other whistleblowers who received awards for significantly contributing to successful enforcement actions.

The matter at hand is distinguishable from the Order cited by Claimant 1. Unlike the claimant in the cited Order, the record here does not indicate that Claimant 1’s information resulted in, for example, the “identification of an important witness, who in turn provided helpful

¹⁰ See Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90864 (Jan. 7, 2021).

supporting evidence, which significantly contributed....”¹¹ On the contrary, Enforcement staff reported that Claimant 1’s information did not assist Enforcement staff in bringing the Covered Actions at hand. Indeed, the Initial Declaration stated that “[n]one of [Claimant 1’s] information was used in, or had any impact on, the settlement negotiations or resulting charges brought by the Commission in the Covered Actions.” In connection with this argument, Claimant 1 also contends that he/she still significantly contributed to the Covered Actions because his/her information and assistance “**confirmed**” ^{Redacted} (emphasis added). But confirming information obtained from other sources does not automatically make a whistleblower eligible under Rule 21F-4(c)(2).¹² 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. Here, we find that both the Initial Declaration and Supplemental Declaration sufficiently demonstrate that Claimant 1’s information did not help advance the Covered Actions in a manner that was substantial and important.

In making the above argument, Claimant 1 also presents that his/her willingness to provide an affidavit to be used in the Commission’s litigation constituted significant contribution under Rule 21F-4(c)(2). As discussed in the Initial Declaration, while other staff members followed up with Claimant 1 and his/her counsel and interviewed Claimant 1 for the purpose of obtaining an affidavit in support of ^{Redacted}, this affidavit was never used in connection with either of the Covered Actions. Although it is true that Claimant 1 was willing to provide an affidavit, the standard for award eligibility is not what the staff would have or could have done hypothetically, but, rather, what impact the whistleblower’s information actually had on the investigation.¹³ Here, the affidavit was never used in connection with the Covered Actions and, as explained in the foregoing paragraphs, Claimant 1’s information did not otherwise qualify as significant contribution under Rule 21F-4(c)(2).

Third, Claimant 1 argues that there is a close nexus between his/her information and certain charges in the Covered Actions. In the Claimant 1 Response, Claimant 1 wrote in his/her response that he/she provided “new” information such as “specific and detailed information about ^{Redacted} [the Company], including how ^{Redacted}.” Claimant 1 also responded to note that there is a “close nexus” between his/her information and certain charges in the SEC’s successful Covered Actions. Claimant 1 contends that, “[w]hile [his/her] TCR focused on [the Company’s] ^{Redacted}, [his/her] subsequent communications with the SEC provided significant information related to ^{Redacted}.” Claimant 1 also contends that his/her inside information about the Company must have been new

¹¹ *Id.* at 4.

¹² *See supra fn. 9.*

¹³ *See Order Determining Whistleblower Award Claim*, Release No. 34-88667 (April 16, 2020) (“We must look to whether the Claimant’s information actually contributed to the success of the Covered Action, not whether ‘it should have or could have,’ as Claimant urges us to do.”) (citing *Order Determining Whistleblower Award Claim*, Release No. 34-85412 (Mar. 26, 2019)).

information “as the SEC did not

.”

Redacted

The Initial Declaration noted that Enforcement staff did not receive any new information from Claimant 1—including in his/her TCR, through his/her counsel, or in staff interviews of Claimant 1—on which the staff relied or that resulted in the Covered Actions. Indeed, the Initial Declaration clearly indicated that both Covered Actions were “based on information the staff obtained from other sources.” In the Claimant 1 Response, Claimant 1 states, among other items, that he/she provided “new” information in subsequent communications related to the “
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”, that the Company “
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Redacted
”, and that the “
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.” But, even if Claimant 1 provided such information, the Supplemental Declaration from Enforcement staff indicates that this information, too, was already obtained from other sources.

Lastly, Claimant 1 references the goals of the whistleblower program and summarizes many of the arguments discussed above. We acknowledge and appreciate the sacrifices that many whistleblowers make and the hardships they may endure, including
Redacted
Based on the record in this matter, however, we find that Claimant 1 did not meet the eligibility requirements for an award.

For these reasons, Claimant 1 is not eligible for a whistleblower award in the Covered Actions.

B. Claimant 4

Claimant 4 does not qualify for a whistleblower award in this matter because his/her information did not cause the staff to open the investigation or examination that led to the Covered Actions, nor did Claimant 4’s information cause the staff to inquire into different conduct in or significantly contribute to the success of the Covered Actions. As referenced above, the Claimant 4 Response principally focuses on what he/she describes as Commission staff’s “failing to forward [his/her] information to the investigative staff.” Claimant 4 adds, “[i]f it hadn’t been for the review team’s negligence, my information would have surely contributed to the successful enforcement action.”

First, none of Claimant 4’s information was used or considered by Enforcement staff in connection with the opening of the Investigation. Here, the Initial Declaration reflects that the Investigation was opened on or about
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, approximately four months before Claimant 4 submitted his/her TCR on or about
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. Accordingly, Claimant 4’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant 4’s tip to the Commission did not cause the Investigative staff to inquire into different conduct or significantly contribute to the success of the Covered Action. The Claimant 4 Response takes issue with the Commission failing to forward his/her information to the investigative staff and he/she believes his/her information “would have surely” contributed to the Covered Actions. As previously stated, the standard for

award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower's information actually had on the investigation.¹⁴ Despite Claimant 4's assertions that his/her tip *would have* contributed if received, it does not change the fact that Claimant 4's tip *in actuality* was not received or used by the Commission staff assigned to the Investigation. Under those circumstances, Claimant 4's information cannot be said to have contributed to the success of the Covered Actions.

Finally, the Claimant 4 Response appears to argue that since his/her TCR would have contributed to the success of the Covered Actions had the staff forwarded it to the relevant investigation, he/she deserves at least a 10 percent award. Here, we reiterate our response in the foregoing paragraph: award eligibility is not based upon hypothetical circumstances.

For these reasons, Claimant 4 is not eligible for a whistleblower award in this matter.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant 1 and Claimant 4 in connection with the Covered Actions be, and they hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹⁴ *See id.*