

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 34-100771 / August 19, 2024

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-34

In the Matter of the Claim for an Award

in connection with

Notice of Covered Action ^{Redacted}

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On May 30, 2023, the Office of the Whistleblower (“OWB”) issued a Preliminary Summary Disposition 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. For the reasons discussed below, Claimant’s award claim is denied.¹

I. Background

A. The Covered Action

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

¹ OWB issued a preliminary summary disposition recommending denial of another claimant. That claimant did not seek reconsideration of the Preliminary Summary Disposition, and therefore the denial of their claim was deemed to be the Final Order of the Commission under Exchange Act Rule 21F-18.

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

, the OWB posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days, with a posted Claims Due Date of Redacted . Claimant timely filed a whistleblower award claim on Redacted .

B. The Preliminary Summary Disposition

On May 30, 2023, OWB issued a Preliminary Summary Disposition pursuant to Rule 21F-18 recommending that Claimant’s claim be denied because, although staff conducting the Redacted investigation (the “Investigation”) reviewed Claimant’s allegations, staff did not use the information Claimant provided in the Investigation or have contact with Claimant. The Investigation was opened as a result of staff’s review of Redacted Redacted Redacted

Therefore, 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 and the Rules 21F-3(a)(3) and 21F-4(c) thereunder because the information provided did not: (1) cause the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act, 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.

C. Claimant’s Response to the Preliminary Summary Disposition

Claimant timely submitted a response contesting the Preliminary Summary Disposition.³ Claimant principally argues on reconsideration that the misleading statements Redacted Redacted were “enabled by material weaknesses in [the Company’s] system of internal control.” Redacted Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

Redacted

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

Redacted
Redacted
Redacted
Redacted
Redacted
Redacted
Redacted
Redacted

Claimant also argues that paragraph 12 of the staff declaration, as provided in the record produced to Claimant pursuant to *** request, states that an accountant with the Commission’s Office of Market Intelligence (“OMI”) who received Claimant’s tip “was not assigned to the [] Investigation and did provide any additional information from Claimant [] to the staff assigned to the [] Investigation that advanced the [] Investigation.” Claimant contends that this statement shows that their information was in fact used by Enforcement staff.

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 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;⁵ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁶

In determining whether 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.⁷ 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

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

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

⁶ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ 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.

less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁸

Claimant does not qualify for a whistleblower award in the Covered Action because their information did not lead to the successful enforcement of the Covered Action. Claimant’s information did not cause staff to open the Investigation, nor did it cause the staff to inquire into different conduct or significantly contribute to the ongoing Investigation.

The record demonstrates that the Investigation was opened ^{Redacted} as a result of the staff’s review of ^{Redacted} suggesting that the Company had withheld information ^{Redacted}. Claimant submitted their TCR to the Commission in ^{Redacted}, six months after staff opened the Investigation.

Nor did Claimant significantly contribute to the open Investigation. An Enforcement attorney assigned to the Investigation submitted a declaration in connection with the Preliminary Summary Disposition, which we credit, stating that although the investigative team received a copy of the TCR and a memorandum from an OMI accountant summarizing the TCR and the rationale for the recommendation not to pursue the tip, the information provided was not used in the Investigation.

Claimant says they are “disappointed” that Enforcement staff did not use their information because “the conclusion that the SEC landed on [in the Order] was consistent with my allegations.” But a claimant does not satisfy the requirement that their information lead to a successful enforcement action merely by showing some consistency between the allegations in their tip and the Commission’s findings. As enforcement staff have confirmed in a supplemental declaration, which we credit, Claimant’s general allegations of inadequate ^{Redacted} ^{Redacted} (and more specific allegations of inadequate controls with respect to ^{Redacted} matters unrelated to ^{Redacted}) did not help Enforcement staff to establish the elements of the claims at the heart of the Commission’s case—that the Company was reckless in trying to ^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

⁸ Exchange Act Rel. No. 85412 at 8-9.

Redacted . The Commission’s Order does
not mention the Company’s Redacted .

Finally, Claimant argues that the initial Enforcement declaration shows that their information was used. However, the supplemental declaration, which was drafted by the same attorney who wrote the initial declaration, confirms that the initial declaration contained a typographical error and inadvertently omitted a word. The supplemental declaration continues to affirmatively state that, “[n]one of the information Claimant provided advanced the Investigation or contributed to the Commission’s findings reported by [the Company].”

For these reasons, Claimant is not entitled to an award.⁹

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

⁹ Because Claimant is ineligible for an award in the Covered Action, they are also ineligible for a related-action award in connection with the DPA. *See Meisel v. SEC*, 97 F.4th 755 (11th Cir. 2024) (“Rule 21F-11 clarifies that a whistleblower cannot independently qualify under a related action: instead, the whistleblower must qualify for an award under the Covered Action, and then may use related actions to calculate the amount of the award for which the whistleblower is eligible”).