

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95222 / July 8, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-62

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. For the reasons discussed below, Claimant’s award claim is denied.

I. Background

A. The Covered Action

On Redacted the Commission charged Redacted with

According to the Commission’s complaint, Redacted The

Commission charged the defendants with violating Redacted

Redacted On Redacted the court entered final judgment by consent as
to Redacted enjoining *** from future violations of the securities laws and ordering *** to
disgorge Redacted On Redacted the court entered final judgment by consent as to ***
Redacted enjoining *** from future violations of the federal securities laws and ordering *** to
disgorge Redacted

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 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 determined that the investigation that led to the Covered Action was opened and pursued as a result of referrals from another regulatory agency (the “Other Agency”). The CRS also determined that Claimant’s information did not significantly contribute to the Covered Action and consisted primarily of publicly available information, information already known to the staff, or information that was otherwise vague and unsubstantiated.

The CRS also concluded that Claimant did not qualify for an award because Claimant’s information was provided before July 21, 2010, the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), and thus did not constitute original information within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(2) and 21F-4(b)(1)(iv) thereunder. The CRS determined that Claimant’s whistleblower application was based on emails sent to the Commission and other agencies beginning in ^{Redacted}. The record before the CRS demonstrated that Claimant’s information provided to the Commission after July 21, 2010 was already known to the staff, publicly available, or contained general or vague allegations of wrongdoing that were unsubstantiated and did not lead to the success of the Covered Action under Rule 21F-4(c)(2) of the Exchange Act.¹

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.² Claimant principally argues that he/she provided information to the Other Agency and the Commission beginning on ^{Redacted} and that such information later caused Commission staff to open the investigation that led to the Covered Action. Claimant also argues that he/she continued to provide information to the Commission and other law enforcement agencies after

¹ While not a basis for the denial, the CRS also concluded that Claimant’s information primarily consisted of publicly available information without any additional evaluation, and as such would likely not qualify as independent knowledge or independent analysis and thus would not constitute original information.

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

contacting the Commission in ^{Redacted} and that such information included public and nonpublic material that assisted the staff’s investigation. Claimant also states that if the Commission relied upon certain media stories as a basis for opening its investigation, Claimant was a source of information for those stories and acted in an attempt to educate the public about the ^{Redacted} schemes.

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.³ Among other things, to be considered original information the submission must be provided to the Commission for the first time after July 21, 2010.⁴ 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;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 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.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 less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁸ For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

As an initial matter, any information that Claimant provided to the Commission or that Claimant provided to another agency, which then provided such information to the Commission, for the first time prior to July 21, 2010, is not considered original information.⁹ Therefore, Claimant’s ^{Redacted} submissions to the Commission, any ^{Redacted} submissions Claimant made to the Other Agency, and any other submissions Claimant made to the

³ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

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

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

⁶ See Exchange Act Rule 21-F-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.

⁸ Exchange Act Rel. No. 85412 at 8-9.

⁹ See Exchange Act Rule 21F-4(b)(1)(iv); 17 C.F.R. § 240.21F-4(b)(1)(iv).

Commission or to news media prior to July 21, 2010 are not original information and cannot serve as the basis for a whistleblower award. In addition, the record demonstrates that Commission staff opened the investigation that led to the Covered Action prior to July 21, 2010 based upon a referral from the Other Agency.

With regard to any information Claimant provided to the Commission after enactment of the Dodd-Frank Act on July 21, 2010, the record demonstrates that such information did not lead to a successful enforcement action. First, because the investigation that led to the Covered Action was opened before July 21, 2010, none of Claimant's information submitted after that date could have caused the investigation to be opened. Second, after review of Claimant's response to the Preliminary Determination, the staff assigned to the Covered Action confirmed in a supplemental declaration, which we credit, that Claimant's information submitted after July 21, 2010 did not materially contribute to the staff's investigation. The staff confirmed that Claimant's information was either already known to the staff, based upon publicly available information, or consisted of vague or general allegations of misconduct that were unsubstantiated.¹⁰ Therefore we find that Claimant's information did not cause the staff to look into different conduct as part of its ongoing investigation, nor did Claimant's information significantly contribute to the investigation. Claimant's information therefore does not qualify for a whistleblower 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.

Jill M. Peterson
Assistant Secretary

¹⁰ To the extent that Claimant argues that he/she is the "original source" of information in news articles which allegedly assisted the staff's investigation, Claimant's argument is unpersuasive. Claimant has not provided sufficient information to confirm that he/she is the "original source." *See* Rule 21F-4(b)(5). Further, the staff confirms that news articles that Claimant provided the staff did not materially advance the investigation: any such information was generally either already known to the staff and/or contained vague and general allegations of misconduct that were unsubstantiated.