

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95485 / August 12, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-73

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 charged Redacted (the “Defendant”) with

Redacted According to the Commission’s complaint, Defendant Redacted

Redacted

Redacted

Redacted Redacted The Commission charged Defendant with violating Redacted the Securities Act of 1933 (“Securities Act”), and Redacted the Securities Exchange Act of 1934 (“Exchange Act”) and Rules Redacted

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

^{Redacted} thereunder. Defendant consented to entry of final judgment imposing permanent injunctions and ordering Defendant to pay disgorgement of ^{Redacted} prejudgment interest of ^{Redacted} and a civil penalty of ^{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

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 stated that Enforcement staff had already opened the investigation that led to the Covered Action (“the Investigation”) before receiving Claimant’s information and that Claimant’s information was not otherwise used in the Investigation or the successful enforcement action.

The CRS also stated that some of Claimant’s information did not qualify for an award because it was provided in part 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.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.² Claimant principally argues that while he/she provided some information to the Commission before July 21, 2010, Claimant provided much of Claimant’s information after July 21, 2010, and that Claimant’s information contributed to the success of the action against Defendant. Claimant further argues that he/she had interactions with the Defendant and shared that information with the Commission. Claimant also states that he/she “communicated numerous times” with Enforcement Staff in the ^{Redacted} (“Regional Office”) and also with the Enforcement staff member who drafted a declaration relied upon by the CRS. Claimant argues that the Regional Office staff might have communicated his/her information to staff assigned to the investigation and thus contributed to the investigation.

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

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 for the first time prior to July 21, 2010 is not considered original information pursuant to the Dodd-Frank Act.⁹ Therefore, Claimant’s submissions prior to July 21, 2010 are not original information and cannot serve as the basis for a whistleblower award.

With regard to the information Claimant provided to the Commission after enactment of the Dodd-Frank Act on July 21, 2010, the record also demonstrates that such information did not lead to a successful enforcement action. First, the staff assigned to the Covered Action did not receive Claimant’s information until after the Investigation was opened, so Claimant cannot be credited with causing the staff to open an investigation. Second, as relevant here, the record shows that Claimant’s information did not cause the staff to look into different conduct as part of

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 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.

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).

an ongoing investigation or significantly contribute to an ongoing investigation. The staff confirms that Claimant's information was already known to the staff at the time it was received, and Claimant's information did not strengthen the Commission's case against the Defendant, nor did it lead to additional charges against the Defendant. Further, in a supplemental declaration, staff assigned to the Investigation confirmed that while staff received information from Regional Office Enforcement staff, that information was limited to testimony transcripts and documents provided by Defendant and separately by a regulated entity. These transcripts and documents were obtained during the course of a different investigation. None of the transcripts were of Claimant's testimony and none of the documents had been provided by Claimant. 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. Accordingly, Claimant's information 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.

Vanessa A. Countryman
Secretary