

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96970 / February 24, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-37

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 instituted settled administrative and cease-and-desist proceedings in the Covered Action, charging Redacted (collectively, the “Respondents”) with violations of Redacted

The Commission found that Respondents Redacted

Redacted The Commission charged Redacted

Redacted In addition, the Commission found that Redacted

Redacted

The

Commission also alleged that the Respondents ^{Redacted} To settle the charges, Respondents agreed to pay ^{Redacted} in disgorgement and prejudgment interest, and a civil monetary 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

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 preliminarily determined 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 also noted that the information Claimant submitted did not cause the staff to open the Investigation and Claimant’s information was not used in the successful enforcement of the Covered Action.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.¹ Claimant argues that the record before the CRS was “deficient of information justifying denial of an award” to Claimant because the staff relied upon a single Enforcement staff declaration, while Claimant alleges that “many other SEC staff members” worked on the matter, including staff that Claimant spoke to and met with. Claimant states that he/she submitted his/her information in ^{Redacted} with supplements in ^{Redacted} and ^{Redacted}. Claimant also states that he/she met with Commission staff at the staff’s request in ^{Redacted} in ^{Redacted} and then in ^{Redacted} in ^{Redacted}. Claimant argues that the information in his/her ^{Redacted} supplement “specifically named ^{Redacted} associated with [Respondents] and cited language from [Respondents’] ^{Redacted} which upon information and belief, was used by the SEC in the [Covered Action].” Because the Covered Action addresses misconduct that occurred between ^{Redacted} Claimant alleges that his/her “detailed filings and industry insight very likely contributed in a material way to . . . the need [to] bring an enforcement action.” Claimant also argues that even if staff assigned to the Investigation did not receive information from Claimant directly, the staff may have received and relied upon information that Claimant provided to other staff at the Commission.

¹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Claimant requests that Claimant be allowed to depose the Enforcement staff member who prepared the declaration “and others involved in the investigation,” and that Claimant be allowed to review “all documentation the [CRS] utilized,” and that Claimant receive “all emails, correspondence, and other material regarding [Claimant’s] filing, as well as the administrative file for the [Investigation].”

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.² 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 “commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current examination or investigation” and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;³ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁴

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.⁵ 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.⁶ For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

As an initial matter, the record shows that Claimant’s information did not cause Enforcement staff to open the Investigation, either directly or indirectly. Enforcement staff confirms, in a sworn declaration, which we credit, that the Investigation was opened in ^{Redacted} following a referral from the Commission’s Division of Examinations (“Examinations”),⁷ not because of information from Claimant. Examinations staff began an examination of Respondents in ^{Redacted} and the staff declaration also confirms that that the examination of Respondents was not initiated based on Claimant’s information. While one Examinations staff assigned to the examination of Respondents attended the ^{Redacted} meeting with Claimant, the record shows that the information Claimant provided during the meeting was not new or

² Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

³ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

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

⁵ 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 (same).

⁶ Exchange Act Rel. No. 85412 at 8-9.

⁷ At the time, the Division of Examinations was known as the Office of Compliance Inspections and Examinations.

helpful and did not cause Examinations staff to commence the examination of Respondents. In addition, while one attendee at the ^{Redacted} meeting (the “Attendee”) was the co-chief of the specialized Enforcement unit that opened the Investigation over one year later, staff assigned to the Investigation confirmed that they did not receive, review, or use information from the Attendee that caused or contributed to the opening of the Investigation.

The record also does not show that Claimant’s information caused Enforcement staff or Examinations staff to inquire into different conduct or significantly contributed to the ongoing Investigation. A supplemental declaration from OWB staff confirms that Examinations staff did not find Claimant’s information useful during Examinations staff’s exam. And the record also shows that Enforcement staff assigned to the Investigation did not find Claimant’s TCR submissions or any of its supplements useful during the course of the Investigation. Enforcement staff assigned to the Investigation also did not have any communication with Claimant or Claimant’s counsel during the Investigation.

Claimant’s argument that his/her meetings with Commission staff in ^{Redacted} and ^{Redacted} and supplemental submissions contributed either directly or indirectly to the Investigation, is not supported by the record. A supplemental staff declaration, which we credit, confirms that none of the staff assigned to the Investigation attended the ^{Redacted} meeting in ^{Redacted}. The supplemental declaration also confirms that Investigation staff did not recall receiving or reviewing any information from Commission staff based in ^{Redacted} relating to the subject matter of the Investigation. As for the ^{Redacted} meeting, as noted above, while an Examinations staff member who was assigned to the exam of the Respondents attended this meeting, the record shows that Examinations staff did not find that Claimant’s information was useful. Further, none of the information Claimant provided at the ^{Redacted} meeting was used in the Investigation. And staff assigned to the Investigation confirmed that Claimant’s initial and supplemental TCR submissions did not contribute to the staff’s Investigation. Accordingly, while Claimant provided information to the Commission prior to the opening of the Investigation, the record shows that Claimant’s information did not assist the staff during the Investigation or contribute to the Covered Action and Claimant’s argument that the staff may have received and relied upon information originating from Claimant through other Commission staff is not persuasive.

Lastly, Claimant’s argument that the record is “deficient” is not meritorious. The record is based upon declarations sworn under penalty of perjury from one of the primary staff attorneys assigned to the Investigation, as well as the submissions made by Claimant. To the extent that Claimant seeks declarations from staff members he/she spoke with, such information is unnecessary: the record already shows that Examinations staff who attended one of the meetings did not find the Claimant’s information new or helpful. The supplemental declaration from OWB confirms that Claimant’s information did not cause the commencement of the exam, nor was Claimant’s information useful during the exam. Further, Claimant is not entitled to depose Commission staff assigned to the Covered Action, nor is Claimant entitled to “all emails, correspondence, and other material regarding [Claimant’s] filing” or the Commission’s investigative file. Exchange Act Rule 21F-12(a) lists the materials that form the basis for the Preliminary Determination and that Claimant may request from the Commission.⁸ “These rules

⁸ See Exchange Act Rule 21F-10(e)(1).

do not entitle [Claimant] to obtain from the Commission any materials . . . other than those listed in paragraph (a) of this section.”⁹ Claimant requested and received the materials to which he/she was entitled under the Rule 21F-12(a) and is entitled to no more.¹⁰

For these reasons, Claimant 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

⁹ Exchange Act Rule 21F-12(b).

¹⁰ Although not raised in the Response, Claimant also argues in his/her application that Claimant provided information to a reporter at ^{Redacted} which was included in an article published in ^{Redacted} and that this article “almost certainly played a role in some firms deciding to curtail” their misconduct. However, there is no evidence in the record that this article had any impact on the staff’s examination or the Investigation.