

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 98220 / August 25, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-80

In the Matter of the Claim for an Award

in connection with

Redacted

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 1”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 1 filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant 1’s award claim is denied.¹

I. Background

A. The Covered Action

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¹ The CRS also preliminarily denied the award claim of Claimant 2. That claimant did not seek reconsideration of the Preliminary Determination, 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).

According to the Commission's Order, from
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The Commission's Order finds that

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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 1 filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Claimant 1's claim be denied because Claimant 1 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. In his/her award application, Claimant 1 identified twenty-three tips he/she submitted to the Commission. According to the Enforcement staff responsible for the Covered Action, all of the tips other than two were closed and not sent to Enforcement staff responsible for the Covered Action because they contained vague or insubstantial information. While Enforcement staff responsible for the Covered Action received two of Claimant 1's tips, the information was not useful as it was either unrelated to the conduct that ultimately formed the charges in the Covered Action or based on publicly available information, of which they were already aware. Finally, Enforcement staff responsible for the Covered Action had no communications with Claimant 1, and to the extent he/she had communications with other Commission staff, they were not part of the Enforcement team responsible for the Covered Action.

C. Claimant 1's Response to the Preliminary Determination

Claimant 1 submitted a timely written response (the "Response") contesting the Preliminary Determination.²

In his/her request for reconsideration, Claimant 1 makes the following principal arguments: (1) that his/her claim for award is based on two particular TCRs -- Redacted and Redacted both dated Redacted ("Redacted TCRs") -- and claims that these "

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

Redacted and that Enforcement staff responsible for the Covered Action “must have received these TCRs and used them in its investigations;” (2) that the news article that prompted the opening of the investigation did not contain original information; (3) that Enforcement staff used the information in four other TCRs Redacted to subpoena documents from Redacted ; (4) that the Enforcement staff must have received and used two other tips Redacted in connection with subpoenaing another entity Redacted ; and (5) that the staff identified by Claimant 1 in his/her award application Redacted with whom he/she communicated must have forwarded his/her information on to Enforcement staff responsible for the Covered Action.

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 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;⁴ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁵

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.⁶ 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.⁷

As an initial matter, the record shows that Claimant 1’s information did not cause Enforcement staff to open the investigation. Enforcement staff confirms, in a sworn declaration,

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

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

⁵ See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

⁶ 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).

⁷ Exchange Act Rel. No. 85412 at 8-9.

which we credit, that the investigation was opened in ^{Redacted} based on a newspaper article, prior to any information provided by Claimant 1.⁸

The record also reflects that Claimant 1's information did not cause Enforcement staff responsible for the Covered Action to inquire into different conduct or significantly contribute to the ongoing investigation. As to the ^{Redacted} TCRs identified in Claimant 1's Response, Enforcement staff's declaration confirms that they did not receive or review those tips. Nor did Enforcement staff receive or review Claimant 1's other tips, other than ^{Redacted}, submitted on ^{Redacted}, and ^{Redacted}, submitted on ^{Redacted}. Enforcement staff responsible for the Covered Action confirmed that they did not use these tips in connection with their investigation and submitted a supplemental declaration affirming that they did not use the information in any of Claimant 1's tips in subpoenaing documents or information in connection with the Covered Action investigation. Finally, Enforcement staff responsible for the Covered Action confirmed that they did not communicate with the Commission staff identified by Claimant 1 in his/her Response concerning the conduct charged in the Covered Action. And contrary to Claimant 1's assertions, Enforcement staff responsible for the Covered Action did not receive Claimant 1's submissions from the other Commission staff with whom Claimant 1 communicated.

For these reasons, Claimant 1's information did not lead to the successful enforcement of the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant 1 in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

⁸ Claimant 1's argument that the newspaper article did not contain original information is irrelevant as to whether Claimant 1's information led to the success of the Covered Action.