

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 99079 / December 5, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-4

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 (“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 filed a civil action charging Redacted Redacted Redacted and Redacted (collectively, “Defendants”) with Redacted. The Commission’s complaint alleged that Defendants Redacted Redacted. The court entered final consent judgments against the Defendants on Redacted Redacted. Among other relief, the court ordered certain of the Defendants to pay civil penalties totaling Redacted.

On ^{Redacted}, the Office of the Whistleblower (“OWB”) posted a Notice of 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 award 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.¹ 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 Claimant’s information was not the impetus for opening the investigation (“Investigation”) that resulted in the Covered Action and did not significantly contribute to the success of the Covered Action because Claimant provided information that was either already known to investigative staff, not materially relied upon in connection with the Investigation or Covered Action, or not relevant to the Investigation or Covered Action.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (“Response”) contesting the Preliminary Determination.² The Response argues that “the timing of [Claimant’s] original TCR submission – one day before the Commission opened the . . . Investigation – begets the inference that the Commission opened the . . . Investigation at least in part due to [Claimant’s] first TCR submission.” Claimant also contends that the Commission relied upon significant and detailed information and extensive assistance provided to the Commission by Claimant and Claimant’s counsel. The Response states that Claimant submitted a supplemental TCR “two months before the Commission” brought charges against the Defendants in the Covered Action and thus the Commission “had ample time to review [Claimant’s] updated materials.” Additionally, the Response argues that Claimant’s counsel communicated extensively with the Commission’s investigative staff and that Claimant and his/her counsel provided a timeline of events and related documents in response to a request from the Commission’s trial counsel during a telephone interview with Claimant. The Response also states that, following an in-person meeting between Claimant and investigative staff, Claimant permitted the staff to image his/her cell phone, which Claimant asserted contained relevant images of one defendant. Finally, the

¹ The CRS also preliminarily determined to recommend that the award applications of two other claimants be denied. Neither of these claimants submitted a request for reconsideration and, as such, the preliminary determination with respect to each of their award claims became the Final Order of the Commission, pursuant to Rule 21F-10(f).

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

Response asserts that the Commission has a programmatic interest in issuing Claimant a whistleblower award because such an award would encourage others with relevant information to come forward to report securities fraud.

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 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 (1) the original information caused the staff to commence an examination, open an investigation, or inquire into 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 (2) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁵

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.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 For the reasons discussed below, we find that Claimant is not eligible for a whistleblower award in the Covered Action.

First, the record shows that Claimant’s information did not cause Enforcement staff to open the Investigation. According to a sworn declaration (“Initial Declaration”) provided under penalty of perjury by one of the Division of Enforcement attorneys responsible for the Investigation, which we credit, the Investigation was opened based on information obtained and reviewed in connection with a separate investigation, rather than on any information provided by Claimant. A supplemental declaration (“Supplemental Declaration”) provided by the same Enforcement attorney, which we also credit, confirms that the information Claimant provided did not lead investigative staff to inquire into materially different conduct that then formed the basis for any of the charges in the Covered Action or allow the Commission to bring any additional charges.

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 21F-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.

⁷ Exchange Act Rel. No. 85412 at 8-9.

Second, based on the record, we conclude that Claimant's information did not significantly contribute to the success of the Covered Action.⁸ While the record includes evidence that Claimant submitted a detailed TCR supplement, met in person and spoke by telephone with Enforcement staff, offered to provide continuing assistance to the staff, permitted the staff to take an image of Claimant's phone, and provided a timeline of events at the request of trial counsel, the record does not demonstrate that Claimant's information made a substantial and important contribution to the success of the Covered Action. Rather, the record reflects that the information Claimant provided was either already known to the staff or not directly used or materially relied upon in connection with the Investigation or Covered Action. According to the Initial Declaration and Supplemental Declaration, Claimant's information, including information obtained from Claimant's phone, did not materially advance the Investigation, materially contribute to the charges in the Covered Action, save the Commission significant time or resources, or otherwise materially assist the Investigation. With respect to Claimant's assertions that he/she participated in a telephone interview with trial counsel for the Commission and subsequently provided a timeline of events, the record demonstrates that trial counsel did not find Claimant's information, including the timeline of events, helpful in the Covered Action.

Finally, the argument that the Commission's "programmatic interest" in encouraging whistleblowers to come forward merits issuing Claimant an award is without merit. The whistleblower program rules provide that, in exercising its discretion to determine the appropriate dollar or percentage amount of a whistleblower award, the Commission will consider "its programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws."⁹ This factor, however, is not a separate pathway to award eligibility, but instead is considered only after a claimant is determined eligible for an award. As stated above, Claimant is not eligible for an award and thus the Commission's programmatic interest in deterring securities law violations is not relevant to the disposition of this claim.

For these reasons, Claimant is not eligible for an award with respect to the Covered Action.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant's whistleblower award application be, and it hereby is, denied.

⁸ We need not address the Response's assertion that Claimant's information was derived from "independent analysis" because, even if it were, the record demonstrates that Claimant is ineligible for an award because his/her information did not lead to the success of the Covered Action.

⁹ See Exchange Act Rule 21F-6(a)(3), 17 C.F.R. § 240.21F-6(a)(3).

By the Commission.

Vanessa A. Countryman
Secretary