

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88973 / May 29, 2020

WHISTLEBLOWER AWARD PROCEEDING
File No. 2020-19

In the Matter of the Claim for an Award

in connection with

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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 application 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

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The Office of the Whistleblower posted the above-referenced Notice of Covered Action on the Commission's public website, inviting claimants to submit whistleblower award applications within 90 days.² Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

On ^{Redacted}, the CRS issued a Preliminary Determination³ recommending that Claimant's claim be denied. In reaching this preliminary recommendation, the CRS noted that the record reflected that the Commission received an anonymous complaint which prompted staff in the Commission's Office of Compliance Inspections and Examinations ("OCIE") to initiate a cause examination of ^{Redacted}. Based upon OCIE's referral, staff in the Division of Enforcement then opened the investigation ^{Redacted} which led to the bringing of the Covered Action. Claimant's tip was not received by the Commission until more than a year after the anonymous complaint had been received, after the OCIE cause examination had been completed, and five months after staff in the Division of Enforcement had opened its investigation. By the time Claimant's tip was submitted to the Commission, the investigative staff was already aware of the issues raised by Claimant as a result of the anonymous tip, the OCIE examination and the staff's own investigative efforts. In addition, the information in Claimant's tip and that Claimant provided in a subsequent meeting with the staff did not significantly contribute to the success of the Covered Action.

C. Claimant's Response to the Preliminary Determination

On ^{Redacted}, Claimant submitted a timely written response contesting the Preliminary Determination.⁴ Specifically, Claimant argues in response to the Preliminary Determination that, since the staff acknowledges that Claimant's tip was promptly forwarded to the SEC's Enforcement Division, expeditiously reviewed by the staff, contained allegations and analysis relevant to the SEC's investigation, and prompted the staff to ask the Claimant to meet with the Enforcement Division staff, it is unreasonable to believe that Claimant's information did not contribute to the investigation.⁵ To further substantiate this argument, Claimant requests to

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

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁴ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁵ In support of this contention, Claimant notes that the Office of the Whistleblower ("OWB") wrote to Claimant's counsel soon after OWB posted the notice for the Covered Action on its website informing counsel of the posting and the deadline for submitting a whistleblower award application for this matter. Claimant acknowledges that OWB stated that its

be allowed to depose certain members of the investigative staff who attended the meeting and to review all emails, correspondence and other material regarding Claimant's tip, as well as the administrative file for the investigation.⁶

III. 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.⁷ Claimant argues that Claimant is eligible for an award under this standard because Claimant provided specific and detailed original information, including documents, to the Commission directly relevant to the issues underlying the Covered Action, that this information was promptly forwarded to staff in the Division of Enforcement, and that the staff found the information to be sufficiently credible and relevant to invite Claimant to meet with it and to answer staff questions about the information.

Under the whistleblower rules, an individual's original information leads to the success of an action where it causes staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual's original information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. In determining whether an individual's information significantly contributed to an action, we consider factors such as whether the information allowed us to bring: the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.⁸ The individual's information must have been "meaningful" in that it "made a substantial and important contribution" to the success of the covered action.⁹

communication to counsel should not be taken as an indication that Claimant would be found to have met the criteria for receiving an award. In any event, the burden is on a claimant to establish entitlement to an award. It is not the Commission's obligation or duty to inquire as to whether Claimant may have been the anonymous tipster, particularly when Claimant had not asserted this in Claimant's earlier submissions to the Commission.

⁶ Claimant also faults the Commission for not inquiring as to whether Claimant was the anonymous tipster. Conversely, Claimant faults the staff's reliance on information provided by an anonymous tipster, whose credibility, Claimant contends, "is likely to be highly suspect." Since Claimant does not maintain that Claimant was, in fact, the anonymous tipster and did not provide any evidence in support of such a contention, we find this argument to be without merit.

⁷ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁸ See Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,000, 34,325 (June 13, 2011).

⁹ Whistleblower Award Proceeding File No. 2018-6, Rel. No. 34-82897 (Mar. 19, 2018); Whistleblower Award Proceeding File No. 2016-9, Rel. No. 34-77833 (May 13, 2016).

Redacted We accordingly conclude that the information provided by Claimant Redacted and a subsequent meeting with Enforcement staff in Redacted did not significantly contribute to the success of the Covered Action.

Claimant argues that the record is deficient of information justifying denial, and requests that, to ensure a complete record for review, Claimant be permitted to depose Commission staff, including the staff who attended the Redacted meeting, and review all documentation that the CRS had made available for its review, as well as all emails, correspondence and other material regarding his filing as well as the administrative file for the investigation that led to the Covered Action. Claimant asserts that this information is necessary to explore purported gaps in the Preliminary Determination, to determine whether the Commission had previously received the documents that Claimant provided, and to prove that Claimant's information did, in fact, significantly contribute to the investigation. The whistleblower rules permit an award claimant to request and to receive a copy of the materials that form the basis of the Preliminary Determination.¹⁰ Claimant made such a request and received a copy of these materials. But the whistleblower rules do not authorize a claimant to go on a fishing expedition to depose staff and to obtain copies of the SEC's entire investigative file.¹¹ Moreover, the declaration of the Division of Enforcement staff is clear that Claimant's information was received and reviewed by the staff and that Claimant's information neither caused the staff to open its investigation nor significantly contributed to the success of the Covered Action. Thus we deny Claimant's request for discovery of additional information.¹²

We therefore conclude that Claimant did not provide information that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 and Rules 21F-3(a)(3) and 21F-4(c) thereunder. As a result, Claimant is ineligible for an award with respect to the Covered Action.

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

¹¹ *Id.* See also Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (noting that the whistleblower rules “do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section”).

¹² See *Doe v. SEC*, 729 F. App'x 1, 3 (D.C. Cir. 2018) (concluding that the Commission did not err by rejecting a claimant's request to include additional materials in the administrative record, where the Commission's determination was reviewable on the basis of materials already in the record); Order Determining Whistleblower Award Claim, Release No. 34-79294 (Nov. 14, 2016) (denying whistleblower award to claimant who argued that staff errors resulted in improper processing of submission, because information submitted did not actually lead to successful enforcement of covered action), *pet. rev. denied sub nom. Doe v. SEC, supra*.

IV. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary