

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96381 / November 28, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-17

In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that ^{Redacted} (“Claimant 1”) receive a whistleblower award of \$20 million, which represents ^{***} percent (%) of the monetary sanctions collected in the above-referenced Covered Action (the “Covered Action”). The CRS further preliminarily determined to recommend the denial of the award applications of ^{Redacted} (“Claimant 2”) and ^{Redacted} (“Claimant 5”). Claimant 1 did not submit a response contesting the Preliminary Determinations, but Claimant 2 and Claimant 5 each submitted a timely notice contesting the preliminary denial of his/her award claim.¹ For the reasons discussed below, the CRS’s recommendations are adopted.

¹ The CRS’s Preliminary Determination also recommended denying an award to a set of joint claimants, who did not request reconsideration. As such, the preliminary denial of their award claim is now deemed to be the Final Order of the Commission through operation of law. Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

I. The Covered Action

On ^{Redacted}
found that ^{Redacted}, the Commission instituted the settled Covered Action in which it ^{Redacted}
(the “Company”) violated ^{Redacted}

^{Redacted}
^{Redacted} among other things, to pay ^{Redacted} The Company was ordered,
^{Redacted}, which the Company has fully paid.

The Covered Action concerned the Company’s ^{Redacted}
^{Redacted}
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^{Redacted}

II. Claimant 1’s Award

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission and that this original information led to the successful enforcement of the Covered Action.² In determining the amount of award, we considered the factors set forth in Rule 21F-6 of the Exchange Act as they apply to the facts and circumstances of Claimant 1’s application.³

Claimant 1 provided significant information and continuing helpful assistance that enabled Commission staff to more quickly and efficiently investigate complex ^{Redacted}
^{Redacted} discussed in the Covered Action. Claimant 1, however, provided no information with respect to ^{Redacted} discussed in the Covered Action, was involved for a short period and at the direction of his/her supervisor in the conduct underlying part of the Covered Action, and delayed reporting for over two years after being involved in such conduct. Given all of these considerations, a ^{Redacted} percent (^{Redacted} %) award appropriately recognizes

² See Securities Exchange Act of 1934 (“Exchange Act”) Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3, 17 C.F.R. § 240.21F-3.

³ Rule 21F-6(a) and (b) factors include the following: (1) the significance of information provided to the Commission; (2) the assistance provided in the Covered Action; (3) the law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.

Claimant 1's contribution to the Covered Action while also accounting for both his/her level of culpability and unreasonable reporting delay.

III. Claimant 2's Award Claim Is Denied

A. Preliminary Denial

The CRS preliminarily determined to recommend that Claimant 2's award claim be denied because Claimant 2 did not provide information that led to the success of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act⁴ and Rules 21F-3(a)(3) and 21F-4(c) thereunder.⁵

Claimant 2 submitted two TCRs. In the first TCR, Claimant 2 alleged that the Company's ^{Redacted} impeded his/her ability to communicate directly with the Commission's Office of the Whistleblower in violation of Exchange Act Rule 21F-17(a). Claimant 2 asserted that several months after his/her TCR submission, the Company ^{Redacted}

^{Redacted}

According to a staff declaration, the Covered Action investigation staff never reviewed Claimant 2's first TCR or had any communication with him/her about his/her information. Claimant 2's first TCR provided no information that was used in the Covered Action investigation or contributed to the Covered Action.⁶

Claimant 2 submitted the second TCR just hours before the Covered Action was instituted. Claimant 2 alleged that ^{Redacted} ^{Redacted}. According to a staff declaration, this TCR was referred to Covered Action investigation staff on the day that the Covered Action was instituted. In addition, the staff declaration stated that the TCR provided no information that was used in the Covered Action investigation or contributed to the Covered Action.

B. Response

In his/her reconsideration request, Claimant 2 asserts that the information in his/her second tip provided the Company with additional motivation to agree to the Covered Action settlement. Claimant 2 states that as part of his/her effort to find whistleblower counsel, a month and a half before institution of the Covered Action, he/she provided the information that would be in his/her later tip to a lawyer and that lawyer later advised him/her that he could not represent him/her because he had a conflict of interest. Claimant 2 speculates that that lawyer may have been representing the Company in the Covered Action investigation and that his/her information

⁴ 15 U.S.C. § 78u-6(b)(1).

⁵ 17 C.F.R. §§ 240.21F-3(a)(3) and 4(c).

⁶ Nor did any witness in the Covered Action investigation mention to Enforcement staff during the investigation.

^{Redacted}

may have provided the Company with extra motivation to settle the Covered Action in order to avoid Enforcement staff from expanding the investigation to include the misconduct alleged by him/her.

C. 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 As relevant here, information may lead to the successful enforcement of a 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 if it: (1) causes 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 the information; or (2) significantly contributes to the success of a Commission judicial or administrative enforcement action.⁸ 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.⁹

Claimant 2’s information did not cause Enforcement staff to open the Covered Action investigation or to inquire into different conduct as part of the Covered Action investigation and did not significantly contribute to the success of the Covered Action. Enforcement staff responsible for the Covered Action investigation did not review Claimant 2’s first tip. Enforcement staff received Claimant 2’s second tip on the same day the Covered Action was filed, and the tip related to ^{Redacted} which was not part of the Commission’s charges. Furthermore, Enforcement staff provided a supplemental declaration, which we credit, confirming that the law firm to which Claimant 2 provided his/her second tip did not represent the Company in the underlying investigation, and as such, there is no evidence supporting Claimant 2’s supposition that the second tip motivated the Company to settle the charges.

Accordingly, as the record does not show that Claimant 2’s information led to the success of the Covered Action, Claimant 2’s award application is denied.

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

⁸ Rules 21F-4(c)(1) & (2).

⁹ See Order Determining Whistleblower Award Claims, Release No. 34-85412 (March 26, 2019); Order Determining Whistleblower Award Claims, Release No. 34-82897 (March 19, 2018); see also *Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011) (in determining whether information significantly contributed to an enforcement action, the Commission will consider whether the information allowed the agency to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities).

IV. Claimant 5's Award Claim Is Denied

A. Preliminary Determination

The CRS preliminarily determined to recommend that Claimant 5's award claim be denied because Claimant 5 did not provide information that led to the success of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act¹⁰ and Rules 21F-3(a)(3) and 21F-4(c) thereunder.¹¹

Claimant 5 submitted four tips regarding the Company: (1) Redacted complaint alleging that Redacted was Redacted; (2) Redacted whistleblower tip submitted through the Commission's on-line TCR portal alleging that the Company was Redacted; (3) Redacted whistleblower tip submitted through the Commission's on-line portal alleging that the Company had Redacted and (4) Redacted whistleblower tip submitted through the Commission's on-line portal expressing his/her fear that the Company would Redacted

Redacted These tips were not related to the charges in the Covered Action. In addition, according to a staff declaration, none of these tips provided information that was used in the Covered Action investigation or contributed to the Covered Action.

B. Response

In his/her reconsideration request, Claimant 5 states that he/she is entitled to an award because: (1) his/her tips and the Covered Action both focused on the Company's Redacted and his/her tips said that the Company's Redacted; and (2) he/she provided substantial information to Enforcement's Office of Market Intelligence ("OMI") and believes that OMI would have passed along his/her information to the Covered Action investigation staff.

C. Analysis

Claimant 5's information did not cause Enforcement staff to open the Covered Action investigation or to inquire into different conduct as part of the Covered Action investigation and did not significantly contribute to the success of the Covered Action.

Enforcement staff opened the Covered Action investigation based on a source unrelated to Claimant 5. Enforcement staff responsible for the Covered Action investigation clarified in a supplemental declaration, which we credit, that on Redacted, OMI sent an email to an Enforcement accountant ("Accountant"), summarizing information that had been provided by

¹⁰ 15 U.S.C. § 78u-6(b)(1).

¹¹ 17 C.F.R. §§ 240.21F-3(a)(3) and 4(c).

Claimant 5 in his/her ^{Redacted} complaint and proposing that a disposition of no further action appeared warranted given the lack of substantiating evidence supporting Claimant 5's allegations. That same day, the Accountant agreed with the proposed disposition. On ^{Redacted} ^{Redacted}, almost nine months after the ^{Redacted} email communication discussed above, Enforcement staff opened the Covered Action investigation based on information provided by an individual other than Claimant 5. While the Accountant became the lead accountant on the Covered Action investigation, the information in Claimant 5's ^{Redacted} complaint was not used in the Covered Action investigation and did not contribute to the Covered Action.

Enforcement staff responsible for the Covered Action investigation also clarified in a supplemental declaration, which we credit, that none of the information in Claimant 5's last three whistleblower complaints was reviewed by Enforcement staff responsible for the Covered Action investigation, was used in the Covered Action investigation, or contributed to the Covered Action.

Accordingly, as the record does not show that Claimant 5's information led to the success of the Covered Action, Claimant 5's award application is denied.

V. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award equal to ^{***} percent (^{***} %) of the monetary sanctions collected in the Covered Action.

It is further ORDERED that Claimant 2's and Claimant 5's whistleblower award applications in the Covered Action be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary