

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 105810 / June 30, 2026

WHISTLEBLOWER AWARD PROCEEDING
File No. 2026- 31

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 claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (“Covered Action”) because Claimant’s information was not submitted voluntarily. Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.¹

I. Background

A. The Covered Action

On Redacted, the Commission instituted settled cease-and-desist proceedings against Redacted (the “Company”), finding that the Company misstated its financial statements by improperly Redacted. The misstatements primarily resulted from the Company’s efforts to Redacted, in contravention of its publicly-stated Redacted

¹ The CRS also preliminarily denied the award claims of two joint claimants. They did not seek reconsideration of the Preliminary Determination, and therefore the denial of their claims was deemed to be the Final Order of the Commission under Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-10(f).

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. Among other relief, the Commission ordered monetary sanctions exceeding \$1 million.

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 submitted a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Claimant’s claim be denied because he/she did not submit information to the Commission voluntarily, as required under Exchange Act Section 21F(b)(1) and Exchange Act Rules 21F-3(a)(1) and 21F-4(a). Specifically, Claimant’s counsel received a request or inquiry from the Redacted (“Other Authority”) that related to the subject matter of Claimant’s submission to the Commission before Claimant provided information to the Commission.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination (the “Response”). Claimant concedes that the Other Authority initiated contact with his/her counsel, but requests that the Commission exercise its general exemptive authority under Exchange Act Section 36(a) or Exchange Act Rule 21F-8(a) to waive the “voluntary” requirement to grant the award. Claimant primarily contends: (1) his/her internal reporting triggered an internal investigation which in turn prompted the SEC investigation that resulted in the enforcement action; (2) he/she was concerned for his/her personal liability arising from an alleged breach of his/her separation agreement and the prospect of unwarranted retaliatory defamation lawsuits by Company executives he/she implicated; (3) that a denial would subvert the Commission’s policy of encouraging internal reporting; and (4) that a waiver would be consistent with other matters where the Commission used its Section 36(a) exemptive authority to waive the voluntary requirement.

II. Analysis

A. Claimant Did Not Voluntarily Submit Information

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 Under Exchange Act Rule 21F-4(a), a submission to the Commission is considered “voluntary” if, as relevant here, it is provided “before a request, inquiry, or demand that relates to the subject matter of [the] submission” is directed to the claimant or the claimant’s representative “[b]y the Commission” or “[i]n connection with an

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

investigation by . . . any other authority of the Federal government.”³ If an authority of the federal government directs a request, inquiry, or demand to a claimant or his/her representative before the claimant makes a submission, “[the claimant’s] submission will not be considered voluntary, and [the claimant] will not be eligible for an award, even if [the claimant’s] response is not compelled by subpoena or other applicable law.”⁴ The purpose of the rule is to “creat[e] a strong incentive for whistleblowers to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators ‘come knocking on the door.’”⁵ Rule 21F-4(a)(1) establishes a “simple and straightforward test for when we will treat a whistleblower as having submitted information voluntarily; as relevant here, the whistleblower must provide his or her tip to the Commission before investigators direct a ‘request, inquiry, or demand’ to the whistleblower that relates to the subject matter of the tip.”⁶ However, a claimant’s submission also will be considered voluntary if the claimant “voluntarily provided the same information to one of the other authorities identified above [in Rule 21F-4(a)(1)],” such as Congress, other authorities of the federal government, or a state attorney general or securities regulatory authority, “prior to receiving a request, inquiry, or demand from the Commission.”⁷

Here, the record supports the conclusion that the Other Authority initiated contact with Claimant’s counsel in connection with an investigation into the conduct on which Claimant internally reported to the Company prior to Claimant’s submission to the Commission or other regulator on the same subject. The record shows that Claimant’s counsel received an email from the Other Authority on ^{Redacted} asking about the counsel’s representation of Claimant in connection with his/her former employment at the Company. Prior to this request, staff at the Other Authority and the Commission had learned from the Company that Claimant was a key figure leading to the Company’s internal investigation relating to possible ^{Redacted}, ^{Redacted}. Four days later, the Other Authority and Claimant’s counsel had a teleconference during which the Other Authority told counsel of the investigation of the Company, and asked if Claimant would brief them about the Company’s alleged ^{Redacted} scheme, including his/her discovery of that scheme, his/her refusal to ^{Redacted}

³ Exchange Act Rule 21F-4(a)(1)(i).

⁴ Exchange Act Rule 21F-4(a)(2).

⁵ Proposing Release for Whistleblower Rules, 75 Fed. Reg. 70488, 70,490 (Nov. 17, 2010); *see also* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34,307 (June 13, 2011) (stating that a “whistleblower award should not be available to an individual who makes a submission after first being questioned about a matter (or otherwise requested to provide information) by the Commission staff acting pursuant to any of [its] investigative or regulatory authorities”).

⁶ *Order Determining Whistleblower Award Claim*, Release No. 34-84046 at 8 (Sept. 6, 2018).

⁷ Exchange Act Rule 21F-4(a)(2).

Redacted, his/her internal reporting and the retaliation that he/she experienced.⁸ Approximately three weeks later, Claimant submitted a Form TCR to the Commission alleging concerns about the manner in which the Company documented certain transactions in its financial statements and his/her refusal to Redacted, which related to the same subject matter as the request or inquiry from the Other Authority. Because Claimant's representative received a request or inquiry from a federal government authority in connection with an investigation for information concerning the same subject matter as his/her later tip, Claimant's submission was not voluntary.

B. A Waiver Is Unwarranted

Claimant has not presented unique circumstances that would warrant a waiver of the "voluntary" eligibility requirement nor that the application of the voluntariness rule would result in hardship, unfairness or inequity. Exchange Act Section 36(a) provides the Commission the authority in certain circumstances to "exempt any person . . . from any provision or provisions of this title or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." In whistleblower matters, the Commission has found that the public interest warranted an exemption from a rule requirement in a limited number of cases where the unique circumstances of the particular matter raised considerations substantially different from those which had been considered at the time the rules were adopted, and a strict application of the rules would result in undue hardship, unfairness, or inequity.⁹ The Commission may, in its sole discretion, decline to entertain any application for an order of exemption.¹⁰

Claimant also points to Exchange Act Rule 21F-8(a) to support the request for a waiver; however, Rule 21F-8(a) only applies to procedural requirements and the "voluntary" eligibility requirement is not procedural. Under Exchange Act Rule 21F-8(a), the "Commission may, in its discretion, waive any of [the Rule 21F-9 through 21F-11] *procedures* based upon a showing of extraordinary circumstances." (emphasis added). The Commission has previously found that the "extraordinary circumstances" provision is to be "narrowly construed" and, in the context of both late filings and other procedural deficiencies, requires a claimant to show that the reason for the failure to comply with the procedural requirement was beyond the claimant's control.¹¹ As

⁸ Response, pg 3-4.

⁹ *Order Determining Whistleblower Award Claim*, Release No. 34-97529 (May 19, 2023).

¹⁰ 15 U.S.C. § 78mm(a)(2).

¹¹ See, e.g., *Order Determining Whistleblower Award Claims*, Release No. 34-77368 at 3 (Mar. 14, 2016) (declining to grant Rule 21F-8(a) waiver of late WB-APP filing where claimants asserted that extraordinary circumstances included, among others, the "purported importance of the information the claimants provided to the staff"), *pet. for rev. denied sub nom. Cerny v. SEC*, 707 F. App'x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018); see also *Order Determining Whistleblower Award Claims*, Release No. 34-94398 (Mar. 11, 2022) (declining to grant Claimant 2 a Rule 21F-8(a) waiver of the TCR filing requirement where Claimant 2 failed to establish the existence

discussed further below, Claimant's failure to timely report to the Commission was not beyond his/her control.

First, Claimant contends that his/her information triggered the SEC investigation and enforcement action and that the "sequence of events shows an unbroken causal chain from the Claimant's internal reports to this Covered Action."¹² But whether Claimant's information is "original information" or "led to the successful enforcement of the covered judicial or administrative action" is not dispositive with respect to his/her award eligibility. That a claimant submit information to the Commission "voluntarily" is a separate and independent requirement for a whistleblower award,¹³ and these two other eligibility requirements are not a substitute for the voluntary submission requirement. The record demonstrates that the Other Authority contacted Claimant's counsel regarding the subject matter of Claimant's submission *before* Claimant provided information to the Commission, the Other Authority or any other Rule 21F-4(a) enumerated entity. And while the record shows that Claimant provided some new information and records after the submission of the Form TCR that helped to advance the investigation, that information related to the same subject matter as the request or inquiry from the Other Authority. The Commission has never waived the voluntariness requirement solely on the grounds of a claimant's contributions to an investigation. To do so would erode the distinction between those who affirmatively bring information to the Commission and those who are merely helpful witnesses.

Second, Claimant contends that he/she feared being subjected to lawsuits by the Company alleging that he/she had breached the separation agreement and unwarranted retaliatory defamation lawsuits by Company executives he/she implicated. Claimant states that under the advice of his/her counsel, he/she executed a separation agreement with the Company that contained strict non-disclosure and non-disparagement provisions; however, this separation agreement (submitted by Claimant to the Commission as part of the Response) does not restrict his/her ability to submit information about violations of the federal securities laws to government agencies.¹⁴ Rather, Claimant's separation agreement contains a clear and specific carve-out

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of any circumstances that prevented compliance with the TCR filing requirement, despite Claimant 2's assertion that an online report co-authored by Claimant 2 provided "invaluable assistance" to Commission staff).

¹² Response, pg 3.

¹³ See 15 U.S.C. § 78u-6(b)(1) ("the Commission . . . shall pay an award . . . to 1 or more whistleblowers who *voluntarily* provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action" (emphasis added)).

¹⁴ Response, Exhibit C, pg 2.

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¹⁵ Thus, while we understand that Claimant was concerned about unwarranted retaliation and defamatory lawsuits by the Company, on its face, the separation agreement did not prohibit Claimant's ability to report information to the Commission or other government authority. Additionally, the Commission's whistleblower rules allow claimants, who like Claimant are concerned about potential retaliation, to report their information to the Commission anonymously, through counsel.¹⁶

Third, denying an award to Claimant would not undermine the Commission's whistleblower rules that encourage internal reporting.¹⁷ According to Claimant, he/she refused to ^{Redacted} and separated from the company in ^{Redacted}. He/she cooperated with the Company's internal investigators in the ^{Redacted}. It wasn't until approximately a year later, after the Other Authority contacted Claimant's counsel, that Claimant submitted information to the Commission for the first time. Nothing prevented Claimant from reporting his/her information internally and also reporting the conduct to the Commission.

Lastly, Claimant contends that the voluntariness requirement should be waived in the public interest under these unique circumstances and draws comparisons to three other matters where the Commission granted a waiver of this eligibility requirement. The other matters identified by Claimant are factually inapposite.

In granting a waiver in Whistleblower Award Proceeding File No. 2014-8 (July 13, 2014), the Commission considered, among other factors, that the whistleblower's internal reporting occurred *before* the enactment of the Dodd-Frank whistleblower award program rules. Here, the Commission's regulations defining voluntariness for purposes of receiving a whistleblower award have been in place for more than a decade. Claimant's internal reporting occurred well after the enactment of the whistleblower program rules.

In Whistleblower Award Proceeding File No. 2019-7 (June 3, 2019), the Commission exercised its Section 36(a) exemptive authority to waive the voluntary requirement because, among other factors, the whistleblower was not aware of the request made by the other regulatory authority and did not learn of the existence of the other authority's investigation until

¹⁵ Response, Exhibit D, pg 8.

¹⁶ Exchange Act Rule 21F-9(c).

¹⁷ See, e.g., Exchange Act Rule 21F-4(c)(3) (providing a mechanism for claimants who internally report to satisfy the "led to" requirement if they submit their information to the Commission within 120 days); Rule 21F-6(a)(4) (participation in internal compliance systems positively assessed); Rule 21F-6(b)(3) (interfering in internal compliance systems negatively assessed).

several months after reporting to the Commission. Here, Claimant received the request or inquiry from the Other Authority directly, via counsel, and was made aware of the Other Authority's investigation prior to submitting information to the Commission.

The facts here are also distinguishable from Whistleblower Award Proceeding File No. 2018-11 (Sept. 6, 2018) where the Commission considered, among other factors, that at the time the whistleblower was interviewed by the other government agency, the whistleblower did not know of the information that later supplied the critical basis for the whistleblower tip to the Commission. When the whistleblower did learn of the critical information, they promptly reported it to the Commission. In granting a waiver, the Commission noted that the whistleblower's actions were consistent with the whistleblower rules' policy goal of encouraging whistleblowers to come forward early with information about possible violations of the federal securities law rather than wait to be approached by investigators. Here, Claimant was aware of the information that supplied the critical basis for their tip *before* being contacted by the Other Authority. Claimant learned of the information submitted to the Commission during his/her employment with the Company and then waited until *after* being contacted by the Other Authority, more than a year later, to submit this same information to the Commission.

We think the facts and circumstances here are more like other matters where the Commission has declined to use its Section 36(a) exemptive authority to waive the voluntary requirement. For example, in Whistleblower Award Proceeding File No. 2023-57 (May 8, 2023), the Commission determined not to use its Section 36(a) exemptive authority to waive the voluntary requirement where the claimant's counsel became aware of a request from the Commission to the claimant's employer to interview the claimant and only then reported information to the Commission. Likewise, here, it was only after Claimant's counsel was contacted by the Other Authority seeking his/her information that Claimant then decided to report to the Commission.¹⁸

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

¹⁸ See also *Order Determining Whistleblower Award Claim*, Release No. 34-102806 (Apr. 10, 2025) (declining to exercise Section 36(a) exemptive authority to waive the "led to" requirement where a claimant's internal report prompted an internal investigation that subsequently resulted in the opening of the Commission's investigation, but the claimant failed to report that same information directly to the Commission within 120 days as required under Exchange Act Rule 21F-4(c)(3)).