

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 82807 / March 6, 2018
WHISTLEBLOWER AWARD PROCEEDING
File No. 2018-5

In the Matter of the Claim for Award

in connection with

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On ^{Redacted}, the Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of a claim for a whistleblower award submitted by ^{Redacted} (“Claimant”) in connection with Notice of Covered Action ^{Redacted} (“Covered Action”). Claimant filed a timely request for reconsideration.

For the reasons stated below, Claimant’s award claim is denied.

I. Background

On ^{Redacted}

On ^{Redacted}, the Commission’s Office of the Whistleblower (“OWB”) posted Notice of Covered Action ^{Redacted} for the Covered Action. Claimant filed a timely whistleblower award application with OWB; in it, Claimant identified just one submission of information to the Commission, on ^{Redacted}, as the basis for a whistleblower award.

II. Preliminary Determination and Response

On ^{Redacted}, the CRS preliminarily determined to deny Claimant’s award application for two reasons. First, certain of Claimant’s submissions to the Commission, identified through an OWB staff search of relevant Commission databases, did not qualify as “original information” because they were given to the Commission prior to the enactment on July 21, 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank”).² Second, Claimant’s submissions after July 21, 2010, including the ^{Redacted} submission identified in Claimant’s award application, did not “lead to” the successful enforcement of the Covered Action. The CRS preliminarily found that Claimant’s information did not cause the Commission to open its investigation (or inquire into different conduct as part of a current Commission investigation), and that Claimant’s information did not significantly contribute to the success of the subsequent administrative proceeding.³

After requesting and reviewing the record supporting the Preliminary Determination, Claimant submitted a written request for reconsideration on ^{Redacted}. In that request, Claimant offered no factual evidence or legal arguments to rebut the analysis in the Preliminary Determination. Rather, Claimant asserted that the record supporting the Preliminary Determination was incomplete because it failed to account for all communications between Claimant and Commission staff concerning the Covered Action Respondents.

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² See Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-4(b)(1)(iv), 17 C.F.R. § 240.21F-4(b)(1)(iv).

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

III. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.⁴ As relevant here, original information “leads to” the successful enforcement of a covered action if either (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into different conduct as part of a current investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the covered action.⁵

As an initial matter, we observe that Claimant does not appear to contest the Preliminary Determination’s conclusion that any information Claimant submitted prior to July 21, 2010 does not qualify as “original information.” Our whistleblower rules expressly provide as much, and we would adhere to those rules if Claimant had challenged them.⁶

Instead, Claimant’s response to the Preliminary Determination focuses on whether the record adequately accounts for all of Claimant’s communications with the Commission staff concerning the Covered Action Respondents. Significantly, Claimant fails to identify any particular communication that Claimant believes was erroneously omitted from the record. Because our own examination reveals that no post-Dodd-Frank submission by Claimant led to the successful enforcement of the Covered Action, we conclude that Claimant’s contention is without merit.⁷

Following Claimant’s response to the Preliminary Determination, OWB staff conducted a comprehensive search and review of all tips from Claimant stored in the Commission’s TCR

⁴ 15 U.S.C. § 78u-6(b)(1).

⁵ Exchange Act Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

⁶ Exchange Act Rule 21F-4(b)(1)(iv), 17 C.F.R. § 240.21F-4(b)(1)(iv); *see Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

⁷ In the same response to the Preliminary Determination, Claimant contends that the Commission should obtain additional declarations from other members of the Enforcement staff on the underlying investigation. One of the principal Enforcement staff attorneys responsible for the underlying investigation provided two detailed declarations in this matter. That Enforcement staff attorney specifically stated that, in making his declarations, he had consulted with the other members of the investigative team. As such, obtaining separate declarations from each member of the investigative team would not provide any additional insight into whether Claimant’s post-Dodd-Frank information was used in the Covered Action.

System and TCR Repository.⁸ As detailed in the OWB staff declarations in the record, that search revealed more than twenty tips submitted by Claimant that may be categorized as follows:

1. Four TCRs submitted prior to the enactment of Dodd-Frank on July 21, 2010;
2. Four TCRs submitted Redacted, all of which were closed by the Commission's Office of Market Intelligence with a disposition of no further action ("NFA")⁹;
3. Two TCRs submitted on Redacted; and Redacted
4. Fifteen TCRs submitted after the Commission instituted the Covered Action Redacted.

We need not consider whether the tips submitted by Claimant prior to Dodd-Frank (category 1 above) led to the success of the Covered Action, because, as discussed above, Claimant does not dispute that those tips do not constitute "original information" for purposes of an award.

With respect to the tips that were closed with an NFA disposition (category 2), those tips could not have led to the success of the Covered Action, because it is undisputed that they were never forwarded to the Enforcement staff responsible for the investigation and the institution of the Covered Action.

As to the tips submitted by Claimant after the Covered Action was instituted (category 4), they could not possibly have led to the success of the Covered Action, because they were all provided to the Commission after the Commission reached its settlement with the Covered Action Respondents.

Further, we find that the tips submitted by Claimant on Redacted (category 3) also did not lead to the successful enforcement of the Covered Action. The record reflects that the Redacted tip was never forwarded to the Enforcement staff responsible for the Covered Action; instead, the Enforcement staff responsible for the Covered Action was simply informed that the

⁸ The TCR System (short for "Tips, Complaints, and Referrals System") is the Commission's electronic database which records and stores information received from whistleblowers and others about potential securities law violations and records staff action taken with regard to tips, complaints, and referrals ("TCRs") entered into the system. The TCR Repository is a Commission archive of TCRs that the Commission received prior to March 14, 2011, when the TCR System replaced the TCR Repository.

⁹ An NFA disposition indicates that Commission staff will not take any additional steps with respect to a TCR unless subsequent information leads it to reopen or reexamine that TCR.

^{Redacted} tip had been received and that it contained no information that was not already known to them.

The record further reflects that the ^{Redacted} tip was not forwarded to the relevant Enforcement staff until ^{Redacted}—just two weeks before the institution of the Covered Action—and was determined not to directly relate to the subject matter of the Covered Action. In any event, the Enforcement staff declarations in the record show that neither of these two tips was used in any way in the investigation or the institution of the Covered Action. By the time these tips were submitted, the Enforcement staff had already completed its investigation and had agreed on a settlement agreement in principle with the Covered Action Respondents to be recommended to the Commission. We find these Enforcement staff declarations credible given the short time (roughly ^{Redacted}) between the time Claimant submitted these tips in ^{Redacted} ^{Redacted} and the institution of the Covered Action on ^{Redacted}. Moreover, Claimant has offered no contrary evidence or other reason to doubt the accuracy of these declarations.

Conclusion

It is hereby ORDERED that Claimant's whistleblower award claim be, and hereby is, denied.

By the Commission.

Brent J. Fields
Secretary