

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 92214 / June 21, 2021

WHISTLEBLOWER AWARD PROCEEDING

File No. 2021-63

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action: Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

Pursuant to Section 21F of the Securities Exchange Act of 1934 (“Exchange Act”) and the rules thereunder, the Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that the award claim submitted by Redacted (“Claimant”) in connection with the above-referenced Covered Action (“Covered Action”) be denied. Claimant filed a timely written response contesting the Preliminary Determination.

After careful consideration of the administrative record, including Claimant’s written response, we agree with the Preliminary Determination and deny Claimant’s award claim.

I. Background

A. The Covered Action

On Redacted, the Commission instituted a settled administrative and cease-and-desist proceeding charging Redacted

Redacted

Redacted

Redacted

On Redacted, the Office of the Whistleblower posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower

award applications within 90 days, by Redacted .¹ 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's information did not lead 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. The record supporting the Preliminary Determination included the declaration (the "First Declaration") of one of the attorneys in a regional office of the Commission's Division of Enforcement who was responsible for the Covered Action. The First Declaration stated, under penalty of perjury, that none of the members of the investigative team recalled receiving any information provided by Claimant or communicating with Claimant. The First Declaration further attested that Claimant's information did not cause the Commission staff to open the Investigation or otherwise contribute to the success of the Covered Action.

C. Request for Reconsideration

On Redacted, Claimant filed a timely request for reconsideration of the Preliminary Determination. Specifically, Claimant argues in response to the Preliminary Determination that Claimant submitted a specific, viable, and credible tip to the Commission before it began its Investigation and that it is likely that Commission staff reviewed *** tip, or if they did not, it was because the staff did not follow the procedures set out in the SEC's Enforcement Manual regarding the handling of tips, complaints, and referrals. Claimant alleges that the Claimant's tip should have been reviewed between the time of its filing and the end of the Investigation. Attached to the Claimant's request for reconsideration is an email that the Claimant sent to an attorney in a regional office of the Commission's Division of Enforcement on Redacted ("Redacted email"). Claimant sent this email a year after submitting *** initial tip, and in *** email, Claimant recommended that the Enforcement attorney review Claimant's TCR concerning "Redacted".²

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

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

² The Claimant's request for reconsideration identifies a specific attorney in the Commission's Division of Enforcement to whom the email was sent. However, the Claimant did not send the email to that identified attorney. Instead, the Claimant sent the email to a different attorney Redacted in a different Commission regional office. The attorney who received the email has provided a declaration under penalty of perjury.

enforcement of a covered action.³ As relevant here, information leads to the success of a covered action if it: (1) causes the Commission staff to (i) commence an examination, open or reopen an investigation, or (ii) inquire into different conduct as part of a current Commission examination or investigation;⁴ or (2) significantly contributes to the success of a Commission judicial or administrative enforcement action.⁵

The Investigation was opened based on a referral by staff in the Commission's Division of Examinations' Risk Analysis Examination team, which used data analytics to identify ***

Redacted

Redacted

Redacted

The Investigation was not opened

based on information from the Claimant.

We find that none of the information that Claimant submitted led to the successful enforcement of the Covered Action. The *** attorney who wrote the First Declaration confirmed that (1) the investigative team did not review any of Claimant's submissions prior to the filing of the Covered Action; and (2) the Division of Examinations, whose referral prompted the opening of the Investigation culminating in the Covered Action, never reviewed Claimant's tip.⁶ Further, the attorney, who received the Redacted email from Claimant and who shares the same last name of the email's intended recipient, provided a declaration (the "Second Declaration") stating that the email was not sent to the staff responsible for the Investigation that resulted in the Covered Action. This is consistent with statements in the First Declaration, stating that the investigative team never received or reviewed Claimant's tip.

As noted above, Claimant also argues that the staff mishandled their information. In short, Claimant argues that their tip would have led to the success of the Covered Action if it had been handled differently. However, the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower's tip *actually* had on the investigation. Here, the First and Second Declarations, which we credit, are clear that Claimant's information 1) did not cause the staff to open the

³ See 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). In determining whether information significantly contributed to an enforcement action, we consider factors such as "whether the information allowed us to bring: (1) Our successful action in significantly less time or with significantly fewer resources; (2) additional successful claims; or (3) successful claims against additional individuals or entities." *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011). "The individual's information must have been 'meaningful' in that it 'made a substantial and important contribution' to the success of the covered action." *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at *16 (Mar. 26, 2019); *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

⁶ Investigative staff confirmed that the data analytics identifying Redacted was initiated by data analytics on Redacted and that the Claimant's tip played no role in the initiation of the data analytics on either of the companies.

Investigation (which was instead opened by data analytics), and 2) the Claimant's information was never reviewed or received by investigative or exam staff. Accordingly, we find that Claimant's information did not lead to the successful enforcement of the Covered Action. As a result, Claimant is ineligible for an award.⁷

III. Conclusion

For the foregoing reasons, it is ORDERED that the whistleblower award claim from Claimant be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

⁷ See *Order Determining Whistleblower Award Claim*, Release No. 34-85412 (Mar. 26, 2019) (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); *Order Determining Whistleblower Award Claim*, Release No. 34-79294 (Nov. 14, 2016) (same), *pet. rev. denied sub nom. Doe v. SEC*, 729 F. App'x 1 (D.C. Cir. 2018).