

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92356 / July 9, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-68

In the Matter of the Claim for an Award

in connection with

Redacted

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 Covered Action Redacted (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

Around Redacted, staff from the Commission’s Division of Enforcement Redacted opened an investigation to review

“Underlying Investigation”). The staff opened the Underlying Investigation based on Redacted (the Redacted analyses conducted by staff in the Division of Enforcement’s Redacted

On Redacted the Commission instituted administrative and cease-and-desist proceedings against Redacted (“Company A”). Pursuant to Redacted Company A’s offer of settlement, the Commission found that Company A had Redacted

Redacted

The Commission ordered Company A to pay

Redacted

On Redacted the Office of the Whistleblower posted a Notice of Covered Action on the Commission’s public website, inviting claimants to submit whistleblower award applications within 90 days.¹ Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination² recommending that Claimant’s claim be denied, because Claimant did not provide information that led to the successful enforcement of the Covered Action. The CRS found that staff in the Division of Enforcement opened the Underlying Investigation based on Redacted analyses conducted by staff Redacted and not because of any information provided by the Claimant. Further, investigative staff responsible for the Covered Action and the Underlying Investigation received no information from, and had no communications with, the Claimant before or during that investigation.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.³ Claimant does not contest the CRS’s determination that the staff responsible for the Covered Action received no information from Claimant during the Underlying Investigation. Rather, Claimant argues that a whistleblower tip that Claimant submitted about a different entity (“Company B”) “for the same conduct” entitles Claimant to an award for this Covered Action.

On Redacted Claimant submitted a whistleblower tip to the Commission about Company B. In Claimant’s tip, the Claimant alleged, among other things, that Redacted

Claimant acknowledges that the Commission did not bring a covered action based on these allegations. Instead, staff in the Division of Enforcement closed the investigation related to Company B in Redacted

Claimant argues that, through Claimant’s tip regarding Company B, Claimant supplied the Commission with the “thesis, theme, idea or notion Redacted and that information caused staff Redacted to conduct the Redacted analysis, which prompted the opening of the Underlying Investigation. Thus, Claimant surmises, Claimant’s tip “played a role

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

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

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

in helping bring a successful covered action” related to Company A several years later. Claimant points to ^{Redacted} news article that referenced “three overlapping ^{Redacted} investigations involving ^{Redacted} Claimant surmises that the investigations of Company A and Company B were two of those overlapping investigations.

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.⁴ Claimant argues that Claimant is eligible for an award under this standard because Claimant’s tip related to Company B indirectly caused the staff to open, and contributed to the success of, the investigation that led to the Covered Action. The evidence does not support Claimant’s argument.

Claimant’s information regarding Company B does not satisfy Exchange Act Rule 21F-4(c)(1), because the information did not cause staff in the Division of Enforcement to open the Underlying Investigation. The staff responsible for the Underlying Investigation has confirmed that neither the investigation, nor ^{Redacted} analysis, which prompted the investigation, were opened based on any information provided by Claimant. Rather, the ^{Redacted} analysis was opened based on ^{Redacted}

Claimant’s information also did not contribute to the success of the Covered Action under Exchange Act Rule 21F-4(c)(2). Claimant’s Company B tip was assigned to Enforcement staff in a Regional Office in connection with their investigation into Company B. Enforcement staff in the Regional Office attested in a declaration, which we credit, that they did not find evidence to substantiate the Claimant’s allegations, closed the Company B investigation without recommending that the Commission bring an enforcement action, and did not forward Claimant’s information to the Enforcement staff responsible for the Underlying Investigation and had no communications with them about Claimant’s information.

There is no nexus between Claimant’s information and the Covered Action. Claimant’s tip contained no allegations about Company A. The Enforcement staff responsible for the Covered Action and the Underlying Investigation did not receive Claimant’s information directly or indirectly. Claimant’s allegations about Company B do not entitle ^{Redacted} to award eligibility for an enforcement action involving Company A’s ^{Redacted}

As for the news article’s mention of three “overlapping investigations,” even if the subject matter of the Company B investigation and the Underlying Investigation “overlapped,” Claimant would not be entitled to an award unless the information provided was used by the staff involved in the Underlying Investigation and Covered Action. Here, it was not.

⁴ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

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