

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95033 / June 3, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-58

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 claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (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

On Redacted, the Commission charged multiple individuals with Redacted
Redacted

Redacted

The court enjoined the defendants from future violations of the federal securities laws, and ordered Redacted the defendants to pay disgorgement, penalties, and prejudgment interest totaling over Redacted

On ^{Redacted} the Office of the Whistleblower (“OWB”) posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination¹ recommending that Claimant’s claim be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder because Claimant’s information did not either (1) cause 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 Claimant’s information, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2). The CRS reasoned that the investigation that led to the Covered Action was opened based on a referral from a foreign regulator, not because of information provided by Claimant. Claimant’s information also did not significantly contribute to the success of the Covered Action, as it was duplicative of information the staff had already obtained.

The CRS also explained that Claimant did not provide “original information” that led to the success of the Covered Action within the meaning of Exchange Act Section 21F(b)(1) and Rules 21F-3(a)(2) and 21F-4(b) as Claimant’s information was not derived from Claimant’s “independent knowledge,” as defined under Rule 21F-4(b)(2), because the information was derived entirely from publicly-available sources. The CRS also concluded that Claimant’s information was not derived from Claimant’s “independent analysis,” as defined under Rule 21F-4(b)(3), because the information, which included links to publicly available information, such as internet sites, did not include an examination or evaluation of information that “reveals information that is not generally known or available to the public.”² The CRS further concluded that Claimant’s information was not “original information” because the information Claimant provided was already known to the staff. Lastly, the CRS concluded that Claimant did not qualify for an award because certain of Claimant’s information was provided before July 21, 2010, the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), and thus did not constitute original information within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(2) and 21F-4(b)(1)(iv) thereunder.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination (the “Response”). Claimant principally contends that “foreign regulators did indeed provide most of the information given to the Commission but the information [the foreign regulators] got as early as 2010 was given to them by me.” Claimant cites to emails with a representative of a

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

² Exchange Act Rule 21F-4(b)(3).

foreign regulator on ^{Redacted} to support Claimant’s argument that he/she provided information to the foreign regulator. Claimant also attached a ^{Redacted} newspaper article and a ^{Redacted} email with the staff in support of his/her Response. Claimant’s Response did not contest the CRS’s recommendation that his/her claim also be denied on the ground that it did not provide original information derived from his/her independent knowledge or independent analysis. Claimant’s Response also did not contest the CRS’s recommendation that his/her claim be denied on the ground that it was based in part on information submitted to the Commission prior to July 21, 2010.

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 enforcement of a covered action.³ Among other things, to be considered original information the submission must be provided to the Commission for the first time after July 21, 2010.⁴ Additionally, original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to open an investigation “or to inquire concerning 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;⁵ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁶

In determining whether the 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.⁷ For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁸ For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

First, Claimant’s Response did not provide the Commission with evidence in support of Claimant’s contentions that his/her information led to the successful enforcement of the Covered Action. Claimant argues that he/she provided information to a foreign regulator “as early as 2010,” and that foreign regulator gave the information to the Commission, which in turn began

³ Exchange Act Section 21F(b)(1), 15 U.S.C. §78u-6(b)(1).

⁴ See Exchange Act Rule 21F-4(b)(1)(iv); 17 C.F.R. §240.21F-4(b)(1)(iv).

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

⁶ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9 (same).

⁸ Exchange Act Rel. No. 85412 at 8-9.

the investigation that led to the Covered Action. A staff declaration establishes that Enforcement staff opened the investigation that led to the Covered Action on ^{Redacted} based upon a referral from the same foreign regulator. However, Claimant offers no evidence showing what information, if any, he/she provided to the foreign regulator before that date.⁹ Claimant's email exchange with the foreign regulator on ^{Redacted} after the Commission's investigation was already open, does not support his/her contention. Based upon the record before us, including the material provided in Claimant's Response, we find that there is insufficient evidence to conclude that Claimant's information caused the staff to open the investigation that led to the Covered Action.

Second, because the evidence does not establish Claimant's information caused the staff to open the investigation, Claimant's information can only be deemed to have led to the success of the Covered Action if it caused the staff to inquire concerning different conduct as part of a current investigation¹⁰ or "significantly contributed to the success of the action."¹¹ We find, based on evidence in the record, that although Claimant submitted multiple TCRs to the Commission from ^{Redacted} none of Claimant's information caused the staff to inquire into different conduct or made a substantial and important contribution to the success of the Covered Action. According to the staff declaration considered by the CRS, which we credit, Claimant's TCRs provided staff with very limited information relevant to the investigation. This information consisted of a ^{Redacted} Claimant received from a relevant entity. These ^{Redacted} were widely disseminated and publicly available. Claimant's other submissions included ^{Redacted} about companies that later became defendants in the Covered Action, along with very limited information about some of the other defendants and their associates. The staff declaration reflects that Claimant's information was not helpful because the staff was already familiar with the material facts based on detailed information the staff had previously obtained during the investigation. Claimant's information was duplicative of information the staff had already received and did not advance the investigation that led to the Covered Action. Nothing in Claimant's Response demonstrates otherwise. Accordingly, based upon the record before us, we find that Claimant did not provide information to the Commission that led to the success of the Covered Action and, therefore, Claimant is not eligible to receive a whistleblower award.

Lastly, Claimant's Response did not contest the CRS's recommendation that Claimant's claim be denied on the additional ground of not providing original information derived from independent knowledge or independent analysis, nor did Claimant contest the CRS's recommendation that Claimant's application be denied on the separate ground that it was based in part on information submitted prior to July 21, 2010. By failing to timely present any

⁹ Specifically, Claimant has not demonstrated that he/she is the original source of any information the Commission received from the foreign regulator. Exchange Act Rule 21F-4(b)(5), 17 C.F.R. § 240.21F-4(b)(5).

¹⁰ Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹¹ Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

argument to the Commission during the reconsideration stage as to these two other grounds for denial, Claimant has forfeited the opportunity to contest those two grounds.¹²

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹² *Cf.* Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f) (“Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-13 of this chapter.”).”