

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95483 / August 12, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-71

In the Matter of the Claim for 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 (“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 and Other Commission Actions

On Redacted, the Commission brought several actions related to misconduct involving Redacted. First, in the Covered Action, the Commission charged Redacted with violating Redacted for their involvement in Redacted.

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Redacted The Commission subsequently obtained judgments in the Covered Action ordering the defendants and relief defendant to pay disgorgement, prejudgment interest, and/or civil penalties totaling more than Redacted

On Redacted, the Office of the Whistleblower (“OWB”) posted the 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

On Redacted, the CRS issued a Preliminary Determination² recommending that Claimant’s claim be denied on the grounds that Claimant did not provide “original information” that led 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)(2) and 21F-4(b) thereunder because the information was not provided to the Commission for the first time after July 21, 2010, the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).³

The record supporting the Preliminary Determination included the declaration (“Declaration”) of one of the Division of Enforcement (“Enforcement”) attorneys who was assigned to the investigation that led to the Covered Action, Redacted (“Investigation”).⁴ The Declaration stated, under penalty of perjury, that Enforcement staff opened a Matter Under Inquiry (“MUI”) on Redacted, which was subsequently converted to the Investigation. Enforcement staff opened the MUI after receiving a referral from Redacted Referral”) Redacted Referral included information that Claimant had provided to Redacted

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 *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).
⁴ The whistleblower rules contemplate that the record upon which an award determination is made shall consist of, as relevant here, a sworn declaration provided by the relevant Commission staff, in addition to the publicly available materials related to the Covered Action, the claimant’s tip, the claimant’s award application, and any other materials timely submitted by the claimant in response to the Preliminary Determination. See Exchange Act Rule 21F-12(a).

Redacted Referral indicated that Claimant submitted information and documents to Redacted Redacted Redacted Redacted Redacted Redacted Redacted

Claimant also communicated with Commission staff orally and in writing as early as Redacted

Redacted From Redacted, Claimant sent documents and information concerning his/her allegations and complaints to not only the Commission, but also to Redacted. The documents and information that Claimant provided during this time largely centered on Claimant's contention that Redacted Redacted

Redacted From Redacted, Claimant continued to furnish Commission staff Redacted with information concerning ***. On Redacted, Commission staff interviewed Claimant to discuss Claimant's information about Redacted, other individuals, and their involvement in Redacted

According to Enforcement staff, although the information that Claimant provided to the Commission was helpful, Claimant did not provide any information for the first time to the Commission after July 21, 2010 that helped advance the Investigation or was used in, or had any impact on, the charges brought by the Commission in the Covered Action or the other actions initiated by the Commission.

C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.⁵ Claimant argued that he/she did provide original information that was relevant to the Covered Action after July 21, 2010. Claimant stated that he/she submitted information to the Commission and had several calls with Commission personnel to discuss the same. Claimant also stated that he/she was "asked to have a face to face meeting with Redacted *** to review all of the original material I had submitted[,] Redacted to meet with me in Redacted. At this meeting in Redacted Claimant purportedly "was informed that my information flow contributed to their learning of information about the principals named [in the Covered Action] of which they [were] unaware. Redacted

⁵ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Redacted Finally, Claimant argued that the original information that he/she provided after July 21, 2010 was evidenced by numerous documents and other information Claimant sent via FedEx, certified mail, and email. Claimant attached a letter, dated Redacted, which Claimant purported showed that he/she provided significant information after July 21, 2010.

II. Analysis

We deny an award to Claimant in connection with the Covered Action. To qualify for an award under Section 21F of the Securities Exchange Act of 1934 (“Exchange Act”), a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.⁶ Among other things, to be considered original information, the submission must be provided to the Commission for the first time after July 21, 2010.⁷ Claimant did not provide such information to the Commission.

In Claimant’s request for reconsideration, Claimant indicated that certain individuals—Redacted to meet with Claimant in Redacted. In prior submissions to the Commission, Claimant stated that Redacted were employees with Redacted. Regardless of when this purported meeting with Redacted transpired, the meeting had no relevance to the Commission’s Investigation, the Covered Action, or the other Commission actions, all of which were filed on Redacted. Thus, Claimant’s reference to Redacted meeting in Claimant’s reconsideration request provides no evidence indicating that Claimant provided any new information for the first time to the Commission after July 21, 2010 that led to the success of the Covered Action.

Additionally, the letter that Claimant attached to his/her reconsideration request provides no evidence that Claimant is eligible for an award. That letter—which was dated Redacted—was purportedly written by Claimant two weeks *after* the Commission filed the Covered Action and the other Commission actions on Redacted.

Redacted Claimant’s letter contains nothing indicating that Claimant provided any new information for the first time to the Commission after July 21, 2010 that led to the success of the Covered Action.

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

⁷ See Exchange Act Rule 21F-4(b)(1)(iv); 17 C.F.R. §240.21F-4(b)(1)(iv).

Instead, the Declaration, which we credit, confirmed under penalty of perjury that although Claimant provided information to the Commission that was helpful, Claimant did not provide any information for the first time after July 21, 2010 that helped advance the Investigation, or had any impact on, the charges brought by the Commission in the Covered Action.

Based on the Declaration and the other facts in the record—including but not limited to Claimant’s prior submissions to the Commission—we find that Claimant did not provide any new information for the first time to the Commission after July 21, 2010 that led to the success of the Covered Action. Because Claimant did not provide original information to the Commission that led to the success of the Covered Action, Claimant is not eligible to receive a whistleblower award.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary