

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97226 / March 31, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-45

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending the denial of the whistleblower award claims submitted by Redacted (“Claimant 1”) and Redacted (“Claimant 2,” and collectively “Claimants”) in connection with the above-referenced covered action (the “Covered Action”). Claimants filed timely responses contesting the preliminary denials. For the reasons discussed below, Claimants’ award claims are denied.

I. Background

A. The Covered Action

On Redacted Redacted the Commission instituted settled cease-and-desist proceedings against Redacted (the “Company”) alleging that the Company Redacted

Redacted The Commission charged the Company with violations of Redacted The Company agreed to pay disgorgement, prejudgment interest, and a civil monetary penalty totaling 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. Claimants filed timely whistleblower award claims.

B. The Preliminary Determinations

On ^{Redacted} the CRS issued Preliminary Determinations recommending that Claimants’ claims be denied because Claimants did not provide 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)(3) and 21F-4(c) thereunder. The CRS stated that Claimants’ 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) of the Exchange Act. The CRS preliminarily determined that the investigation that led to the Covered Action (the “Investigation”) was opened based upon information from a source other than Claimant 1 or Claimant 2. Further, the CRS preliminarily determined that staff assigned to the Investigation never received any information from, or had any communications with, Claimant 1 or Claimant 2.

C. Claimant 1’s Response to the Preliminary Determinations

Claimant 1 submitted a timely written response contesting the Preliminary Determinations.¹ Claimant 1 principally argues that he/she provided original information about the misconduct that led to the opening of the Investigation and the success of the Covered Action. Claimant 1 states that he/she has been “submitting data concerning [the Company] . . . to the SEC since ^{Redacted},” one year before the staff opened the Investigation. Claimant 1 further noted that he/she had prior contact with other ^{Redacted} government agencies, including the ^{Redacted}

(collectively, the “Other Agencies”), that concerned the misconduct. Claimant 1 provided ^{Redacted} copies of correspondence with the Other Agencies as well as with Commission staff in the ^{Redacted} Office and the Office of the Whistleblower. Claimant 1 questioned the data sharing practices within the Commission and the federal government more generally since the declaration prepared by the staff assigned to the Investigation states that the staff assigned to the Investigation never received any materials from Claimant 1, while Claimant 1 provides evidence of numerous submissions to the Commission staff, as well as Other Agencies. Claimant 1 also contends that the declaration prepared by staff assigned to the Investigation did not comport with Claimant 1’s submissions,

¹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e). Rule 21F-10(e) permits claimants to submit their “written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of this section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for [their] review.” Claimant 1 made a timely submission within the sixty day window. However, Claimant 1 also made subsequent “updated” submissions over the next two years. Submissions made outside this sixty-day window by Claimant 1 are untimely and accordingly not considered as part of the record.

since the staff declaration stated that the Investigation was opened based upon a self-report from the Company, while Claimant 1 argues that he/she provided information to the Other Agencies before the Investigation began.

D. Claimant 2's Response to the Preliminary Determinations

Claimant 2 submitted a timely written response contesting the Preliminary Determinations. Claimant 2 states that he/she provided information regarding the misconduct at issue to the Commission in ^{Redacted} Claimant 2 also states that he/she was contacted by Commission staff in the ^{Redacted} Office (“Other Commission Staff”) in ^{Redacted} and had an in-person meeting with Other Commission Staff in ^{Redacted} Claimant 2 also states that he/she was contacted by Other Commission Staff again in ^{Redacted} Claimant 2 contends that the CRS did not account for the possibility that his/her “extensive internal reports, while at [the Company], comprised or led to the original information that [the Company] later self-reported.” Claimant 2 states that he/she had “performed extensive investigations” into misconduct while employed by the Company and that Company personnel ignored his/her concerns of misconduct. Claimant 2 argues that his/her information “may have been the original source of information that [the Company] uncovered” in 2017 and then self-reported to the Commission. Claimant 2 also calls into question the accuracy of the investigative staff declaration on the grounds that the staff declaration states that the staff did not communicate with Claimant 2, when Claimant 2 met with Other Commission Staff in ^{Redacted}. Claimant 2 argues that his/her information might have indirectly reached staff assigned to the Investigation. Claimant 2 claims that his/her information may have “furthered the SEC’s investigation or provided it with additional leverage in its settlement negotiations with [the Company].”

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.² As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered 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;³ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁴ In addition, “[t]he Commission will consider you to be an original source of the same information that we obtain from another source if the information satisfies the

² Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

³ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

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

definition of original information and the other source obtained the information from you or your representative.”⁵

In determining whether 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.⁶ 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.⁷

A whistleblower will also be deemed to have provided original information that led to the successful enforcement of a covered action if the whistleblower meets all the criteria of Exchange Act Rule 21F-4(c)(3), which requires the following to be established:

- (1) the whistleblower reported original information through an entity’s internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time the whistleblower reported them to the Commission;
- (2) the entity later provided the information to the Commission or provided results of an audit or investigation initiated in whole or in part in response to information the whistleblower reported to the entity;
- (3) the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of [Rule 21F-4]; and
- (4) the whistleblower submitted the same information to the Commission in accordance with the procedures set forth in Rule 21F-9 within 120 days of providing it to the entity.⁸

A. Claimant 1

Claimant 1 does not qualify for a whistleblower award in this matter because his/her information did not cause the staff to open the Investigation, nor did Claimant 1’s information cause the staff to inquire into different conduct in or significantly contribute to the ongoing Investigation. As an initial matter, the record demonstrates that the Investigation was opened based on a self-report from the Company and not based on any information from Claimant 1. There also is not sufficient evidence in the record indicating that Claimant 1’s information played a part in causing the Company to make its self-report to the Commission. A

⁵ See Exchange Act Rule 21F-4(b)(5), 17 C.F.R § 240.21F-4(b)(5).

⁶ 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.

⁷ Exchange Act Rel. No. 85412 at 8-9.

⁸ Exchange Act Rule 21F-4(c)(3), 17 C.F.R § 240.21F-4(c)(3).

supplemental staff declaration, which we credit, also confirms that the staff did not receive any information from the Other Agencies that prompted the opening of the Investigation. Accordingly, Claimant 1's information did not cause the staff to open the Investigation.

The record also does not show that Claimant 1's information caused the staff to inquire into different conduct or significantly contributed to the Investigation. The staff assigned to the Investigation confirmed that Claimant 1's information was not received, reviewed, or used by the staff during the Investigation, nor did the staff communicate with Claimant 1 during the Investigation. Nor was Claimant 1's information received indirectly by Commission staff assigned to the Investigation. A supplemental staff declaration, which we credit, confirms that the staff did not receive any information from the Other Agencies that advanced the Investigation, and thus any such information that Claimant 1 provided to the Other Agencies did not significantly contribute to the Investigation or cause the staff to inquire into different conduct. The supplemental staff declaration also confirms that the ^{Redacted} Office staff with whom Claimant 1 corresponded were not assigned to the Investigation nor communicated with staff assigned to the Investigation regarding the subject matter of the Investigation.⁹ Thus Claimant 1's information did not cause the staff to inquire into different conduct or significantly contribute to the success of the Investigation.¹⁰

For these reasons, Claimant 1 is not eligible for a whistleblower award in this matter.

B. Claimant 2

Claimant 2 is not eligible for a whistleblower award because Claimant 2's information did not cause the staff to open the Investigation, to inquire into different conduct as part of an existing investigation, or significantly contribute to the Investigation. As previously stated, the Investigation was opened based upon a self-report from the Company, not based upon information provided by Claimant 2. There also is not sufficient evidence in the record – and Claimant 2 has not provided any additional information as part of his reconsideration request – indicating that Claimant 2's information played a part in causing the Company to make its self-report to the Commission. Accordingly, Claimant 2's information did not cause the staff to open the Investigation.

The supplemental staff declaration confirms that staff assigned to the Investigation did not receive, review, or use any of the information provided in Claimant 2's TCR submissions or supplemental submissions. While Claimant 2 may have spoken with Other Commission Staff in ^{Redacted} the supplemental staff declaration confirms Other Commission Staff were not assigned to the Investigation nor did staff assigned to the Investigation communicate with Other Commission

⁹ The correspondence from OWB consists of letters acknowledging Claimant 1's TCR submissions and whistleblower application submissions and do not demonstrate that Claimant 1's information in any way assisted Commission staff.

¹⁰ We also do not find persuasive Claimant 1's arguments regarding sharing of information among Commission staff and among other regulatory agencies in general. As stated above, the record demonstrates that staff assigned to the Investigation did not receive, review, or use any information from Claimant 1, nor did staff assigned to the Investigation receive any information from the Other Agencies that advanced the Investigation. Likewise, staff assigned to the Investigation did not receive information that advanced the Investigation from the ^{Redacted} Office staff with whom Claimant 1 corresponded.

Staff regarding the subject matter of the Investigation. Accordingly, Claimant 2's communications with Other Commission Staff did not significantly contribute to the Investigation, nor did it cause Commission staff to inquire into different conduct. Further, the record does not support the argument that Claimant 2's information played a role in the Company's decision to self-report to the Commission.¹¹

Claimant 2's response also raises the question of whether his/her information qualifies for an award pursuant to Exchange Act Rule 21F-4(c)(3).¹² While the record shows that Claimant 2 reported information internally at the Company, the record does not demonstrate that Claimant 2's information was a cause or basis for the Company reporting any information to the Commission. Based on the supplemental staff declaration, Commission staff are not aware of any information indicating that Claimant 2's reports played any part in the Company's decision to report misconduct to the staff. Accordingly, the record does not show that Claimant 2 meets the requirements for an award under Rule 21F-4(c)(3).¹³

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimants in connection with the Covered Action be, and they hereby are, denied.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary

¹¹ The record also does not support Claimant 2's contention that his/her information furthered the staff's investigation or provided the staff with additional leverage. Indeed, as stated above, the staff assigned to the Investigation confirmed that they did not review, receive, or use any information provided by Claimant 2.

¹² Exchange Act Rule 21F-4(c)(3), 17 C.F.R § 240.21F-4(c)(3).

¹³ To the extent that Claimant 2 is requesting that we exercise our discretionary authority pursuant to Section 36(a) of the Exchange Act to grant Claimant an award, we decline to do so. Section 36(a) grants the Commission the authority in certain circumstances to "exempt any person ... from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." However, "the broad objective of the whistleblower program is to enhance the Commission's law enforcement operations ... [by incentivizing whistleblowers] to provide the Commission with timely, useful information that the Commission might not otherwise have received." Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34326 (June 13, 2011). Granting an exemption under circumstances where the record does not show the whistleblower provided information that led to the success of a covered action is contrary to the purpose of the whistleblower program, the public interest, and the protection of investors. As a result, we find that Claimant 2 has not met his/her burden to demonstrate any considerations that would satisfy the requirements for us to exercise our Section 36(a) authority. Similarly, to the extent that Claimant 2 asks the Commission to waive requirements using its discretionary authority under Rule 21F-8(a), Claimant 2 has not met the burden of showing the "extraordinary circumstances" necessary for such relief.