

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101915 / December 16, 2024

WHISTLEBLOWER AWARD PROCEEDING
File No. 2025-8

In the Matter of the Claim for an Award

in connection with

Redacted
Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Office of the Whistleblower (“OWB”) issued a Preliminary Summary Disposition (“PSD”) 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 filed settled cease-and-desist proceedings against Redacted (the “Company”) and its former Redacted Redacted (“Executive”) (collectively, “Respondents”) for concealing Redacted about *** products offered by the Company.

The Commission alleged that, from Redacted through Redacted, the Respondents falsely told investors that the Company Redacted, which

prohibited ^{Redacted} from making misrepresentations to ^{Redacted} about ^{Redacted} products offered by the Company. The Respondents also told investors in earnings calls and investor presentations that the Company's ^{Redacted} ^{Redacted} regarding the Company. In reality, the Company tracked ^{Redacted} ^{Redacted} who complained that the Company's ^{Redacted} made misrepresentations to sell the ^{Redacted} products, ^{Redacted}

The Commission's Order finds that Respondents violated certain antifraud and reporting provisions of the federal securities laws and the Executive profited by selling Company stock when it was inflated because of the misconduct. The Respondents were ordered to pay more than \$1 million in monetary sanctions, among other relief.

The OWB posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications. Claimant submitted a timely award application.

B. The Preliminary Summary Disposition

The OWB issued a PSD recommending that Claimant's claim be denied because Claimant's information did not lead to the success 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.

C. Claimant's Response to the Preliminary Summary Disposition

Claimant submitted a timely written response (the "Response") contesting the PSD.¹ In his/her Response, Claimant makes the following principal arguments: (1) Commission staff arbitrarily disregarded and ignored the information provided by Claimant's TCR presumably in favor of another whistleblower; (2) Claimant's TCR was submitted prior to the opening of the investigation; (3) the Commission should award everyone whose specific, credible and timely information contributed to the opening of the investigation; and (4) Claimant's information "led to" the success of the Covered Action because the Commission's Order incorporates substantially all of the conduct Claimant described in detail in Claimant's Form TCR.

¹ See Exchange Act Rule 21F-18(b)(3).

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, 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;³ or (ii) the conduct was already under investigation, and the original information “significantly contributed to the success of the action.”⁴

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.⁵ 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.⁶

The record supports the conclusion that Claimant’s information did not lead to the success of the Covered Action. According to a declaration provided by Enforcement staff responsible for the Covered Action, which we credit, the investigation was opened based on information provided by an individual other than Claimant.⁷ While the Claimant submitted a tip prior to the opening of the investigation, Claimant’s information did not cause Enforcement staff to open the Covered Action investigation.⁸

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 21-F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁵ Order Determining Whistleblower Award Claims, Release No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Release No. 85412 (Mar. 26, 2019) at 9 (same).

⁶ Release No. 85412 at 8-9.

⁷ This individual did not submit an application for an award in the Covered Action. According to a declaration provided by OWB staff in response to the Response, which we credit, this individual provided information to Commission staff concerning the Company approximately eight months prior to Claimant’s TCR.

⁸ See Order Determining Whistleblower Award Claim, Release No. 99920 (Apr. 8, 2024) (denying whistleblower award claim where the claimant’s tip was submitted prior to the opening of the investigation, but was opened based on a different source, and the responsible investigative staff did not review or receive any information from the claimant).

The record also reflects that Claimant's information did not cause Enforcement staff responsible for the Covered Action to inquire into different conduct or significantly contribute to the ongoing investigation. According to Enforcement staff responsible for the Covered Action, they do not recall receiving or reviewing Claimant's information or having communications with Claimant. Enforcement staff affirmed that none of Claimant's information was used in or contributed to the success of the investigation or resulting Covered Action.

Turning to Claimant's arguments in the Response, Claimant's TCR was not arbitrarily ignored and disregarded. According to a declaration from OWB staff, which we credit, Claimant's tip was uploaded to the Commission's Tips, Complaints and Referrals ("TCR") system in ^{Redacted} and reviewed by staff in the Commission's Office of Market Intelligence ("OMI"). Staff in OMI then interviewed the Claimant in ^{Redacted}. OMI staff closed the TCR with a disposition of "No Further Action" or "NFA."⁹

Regardless of whether Claimant's information was submitted prior to the opening of the investigation, it was information provided by another individual that caused the opening of the investigation. 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 information actually had on the investigation.¹⁰ That individual's information was provided to the Commission several months before Claimant's TCR. Finally, Claimant's information did not significantly contribute to the success of the Covered Action as Enforcement staff did not recall receiving or reviewing his/her information and does not recall communicating with Claimant.

III. Conclusion

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

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary

⁹ A disposition of "No Further Action" or "NFA" generally means that no further action is planned with respect to that TCR unless subsequent information leads Commission staff to reopen or reexamine that TCR. *See* Order Determining Whistleblower Award Claim, Release No. 95489 (August 12, 2022).

¹⁰ *See* Order Determining Whistleblower Award Claim, Release No. 79294 (Nov. 14, 2016) (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), *pet. rev. denied sub nom. Doe v. SEC*, 729 F. App'x 1 (D.C. Cir. 2018).