

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102159 / January 13, 2025

WHISTLEBLOWER AWARD PROCEEDING
File No. 2025-13

In the Matter of the Claims for Award
in connection with

Redacted
Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination in connection with the above-referenced Covered Action (the “Covered Action”) recommending that the whistleblower award applications submitted by ^{Redacted} (“Claimant 1”) and ^{Redacted} _{Redacted} (“Claimant 2”) be denied. Claimants 1 and 2 filed timely responses contesting the Preliminary Determination. For the reasons discussed below, the CRS’s recommendation is adopted with respect to Claimant 1 and Claimant 2.

I. Background

A. The Covered Action

On ^{Redacted}, the Commission instituted settled cease-and-desist proceedings against ^{Redacted} and ^{Redacted} (collectively, “the Respondents”). The Commission’s Order found that ^{Redacted}

^{Redacted}. The Commission also found that ^{Redacted}. Among other relief, the Commission ordered the Respondents to pay monetary sanctions totaling more than \$1 million.

The Office of the Whistleblower posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.¹ Claimants 1 and 2 filed timely whistleblower award claims.

B. The Preliminary Determination

The CRS issued a Preliminary Determination² recommending that Claimant 1’s and Claimant 2’s claims for award be denied. The Preliminary Determination explained that Claimant 1 is ineligible for an award because Claimant 1 did not provide information to the Commission that “led to” the success 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. Claimant 1 submitted a TCR to the Commission more than two years after the investigation had opened. While Enforcement staff reviewed Claimant 1’s tip and interviewed him/her, none of the information Claimant 1 provided to the Commission caused staff to inquire into different conduct or significantly contributed to the success of the Covered Action. The CRS also explained that Claimant 1 did not provide “original information” to the Commission 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 provided by Claimant 1 was duplicative of information already known to the Commission. The CRS determined that Claimant 2 did not provide any information to the Commission until after the Covered Action was filed, and as such, none of his/her information “led to” the success of the Covered Action, and that Claimant 2 is not a “whistleblower” under Exchange Act Rule 21F-2(a)(1) with respect to the Covered Action.

II. Responses and Analysis

A. Claimant 1

Claimant 1 submitted a timely written response contesting the Preliminary Determination.³ In the reconsideration request, Claimant 1 does not argue that the information he/she provided to the Commission beginning in ^{Redacted}, two years after the investigation had opened, contained “original information” or “led to” the success of the Covered Action.⁴ Rather, Claimant 1 argues that he/she “significantly contributed to the success of the action” because of a ^{Redacted} news article in ^{Redacted} (“News Article”) that discussed a complaint filed by Claimant 1 with the ^{Redacted} (“Other Government Agency”). Claimant 1 contends that the News Article, which discussed his/her complaint to the Other Government Agency, caused the Respondents to conclude that they must correct their past misconduct and ultimately resolve the matter with the Commission because an “insider” had

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).

⁴ As such, Claimant 1 has waived any argument that the information he/she provided to the Commission beginning in ^{Redacted} contained “original information” or “led to” the success of the Covered Action.

disclosed their misconduct to federal authorities. As support for this claim, Claimant 1 contends that the Respondents stopped their ^{Redacted} in ^{Redacted}, shortly after publication of the News Article. Claimant 1 further asserts that the Enforcement staff declaration in the record incorrectly asserts that the News Article contained no new original information because the Enforcement staff were already aware of the ^{Redacted} issue. According to Claimant 1, staff did not yet have an insider's account of a critical meeting, as discussed in his/her complaint to the Other Government Agency, during which the Respondents acknowledged the misconduct.

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.⁵ An individual satisfies the “leads to” requirement under Rule 21F-4(c)(1), where he/she “gave the Commission original information that was sufficiently specific, credible, and timely” to cause the staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the individual's original information. An individual satisfies the “leads to” requirement under Rule 21F-4(c)(2) where he/she “gave the Commission original information about conduct that was already under examination or investigation” and the submission significantly contributed to the success of the action. In determining whether an individual's information significantly contributed to the success of an action, the Commission considers factors such as whether the information allowed the Commission to bring the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.⁶ The individual's information must have been “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.⁷

Claimant 1 is not eligible for an award because he/she did not provide information to the Commission that “led to” the success of the Covered Action. Claimant 1 does not satisfy Rule 21F-4(c)(1) because according to the investigative staff declaration, which we credit, Enforcement staff opened the investigation in ^{Redacted} based on an anonymous TCR submitted to the Commission in October ^{***} (“October TCR”), and not because of any information Claimant 1 provided to the Commission; nor did Enforcement staff open the investigation based on the News Article, which was published several months after the opening of the investigation. The information Claimant 1 provided to the Commission also did not cause Enforcement staff to inquire into different conduct, as staff was already aware of and investigating the Respondents' misconduct before Claimant 1 provided any information to the Commission (and prior to the publication of the News Article).

⁵ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁶ See Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,000, 34,325 (June 13, 2011).

⁷ Whistleblower Award Proceeding File No. 2018-6, Rel. No. 34-82897 (Mar. 19, 2018); Whistleblower Award Proceeding File No. 2016-9, Rel. No. 34-77833 (May 13, 2016).

Claimant 1 does not satisfy Rule 21F-4(c)(2) because he/she did not provide information to the Commission that significantly contributed to the success of the Covered Action. The first time Claimant 1 provided any information to the Commission was in ^{Redacted}, more than two years after the investigation had been opened, and after staff had issued subpoenas and taken testimony. In his/her request for reconsideration, Claimant 1 does not point to any new, helpful information he/she provided in his/her ^{Redacted} TCR or in the information he/she subsequently provided to the Commission. Moreover, Enforcement staff confirmed in a sworn declaration that none of the information Claimant 1 provided to the Commission was used in or had any impact on the success of the Covered Action.

Turning to the arguments made in Claimant 1's reconsideration request, Claimant 1's eligibility for an award cannot be established through the News Article. First, Claimant 1 did not provide the information in the News Article to the Commission in ^{Redacted}.⁸ "The plain language of Section 21F and of our whistleblower rules . . . requires that information be 'provided' and 'submitted' directly to the Commission in order to support an award – and makes no allowance for the online publication of information that, by happenstance, indirectly makes its way into the hands of Commission staff."⁹ As such, Claimant 1 cannot claim that he/she satisfies the "led to" requirement by virtue of the News Article.¹⁰ Furthermore, Claimant 1's assertion that it was the discovery by the Respondents that Claimant 1 was a government witness that caused the Respondents to immediately stop their conduct is speculative and without supporting evidence in the record. The record reflects that before Claimant 1's complaint to the Other Government Agency was publicly revealed, the Commission had already opened the investigation and issued subpoenas and investigative staff had already begun meeting with the Respondents to discuss their conduct. In short, Claimant 1 is not eligible for an award because Claimant 1 did not provide original information to the Commission that led to the success of the Covered Action.¹¹

⁸ Nor did Claimant 1 provide the information to the news media. The record reflects that Claimant 1's ^{Redacted}

^{Redacted}, and the news media published a story about the complaint the following day.

⁹ Whistleblower Award Proceeding File No. 2018-7, Rel. No. 82955 (Mar. 27, 2018) at 5; Whistleblower Award Proceeding File No. 2021-40, Rel. No. 91584 (Apr. 16, 2021) at 4 (same).

¹⁰ Even if Claimant 1 can be considered an "original source" of the News Article, that would go to whether Claimant 1 satisfied the eligibility requirement that whistleblowers provide "original information." Claimant 1 must still satisfy the separate "leads to" eligibility requirement, which he/she does not.

¹¹ Because we find that none of the information Claimant 1 provided to the Commission led to the success of the Covered Action, we decline to consider whether Claimant 1 provided "original information" to the Commission.

B. Claimant 2

Claimant 2 submitted a timely written response contesting the Preliminary Determination.¹² Claimant 2 makes the following principal arguments: (1) he/she was the source of a ^{Redacted} article on a website called ^{Redacted} discussing the Respondents' misconduct (hereinafter, "Website article"); (2) his/her failure to comply with procedural requirements should be waived under Exchange Act Rule 21F-8(a) because, *inter alia*, he/she suffered trauma, faced potential retaliation, and feared for his/her and his/her family's personal safety; and (3) he/she may have been the source of the anonymous October TCR that prompted the opening of the investigation.

Section 21F of the Exchange Act defines the term "whistleblower" to include "any individual who provides . . . information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission."¹³ The definition of "whistleblower" enacted by Congress in Exchange Act Section 21F(a)(6) requires that an individual provide information "to the Commission" to qualify as a whistleblower, and the Supreme Court has described this definitional requirement as "clear and conclusive."¹⁴

Claimant 2 is not a whistleblower as defined by Rule 21F-2 and is, therefore, ineligible for an award. Even if as contended by Claimant 2, he/she was the source of the Website article this does not establish Claimant 2's eligibility for an award. As noted above, a claimant must provide information to the Commission. According to the investigative staff declaration, which we credit, the first time Claimant 2 provided information to the Commission was in ^{Redacted}, when he/she sent an email to investigative staff after the Covered Action had been filed and settled, informing staff he/she was the source of the Website article.

Claimant 2 also did not provide information to the Commission that "led to" the success of the Covered Action. Enforcement staff opened the investigation based on an anonymous October TCR, and not because of information Claimant 2 provided to the Commission. Claimant 2 also did not provide information to the Commission that caused Enforcement staff to inquire into different conduct or that significantly contributed to the success of the Covered Action, as Enforcement staff responsible for the Covered Action declared that they did not receive any information from Claimant 2 until after the case was filed and settled.

We reject Claimant 2's request that we waive any procedural deficiencies because of "extraordinary circumstances." To be eligible for a whistleblower award, a whistleblower must give the Commission information in the form and manner that the Commission requires; however, Exchange Act Rule 21F-8(a) affords the Commission discretionary authority to "waive any of [the] procedures [for submitting information or making a claim for an award] based upon

¹² See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

¹³ Exchange Act Section 21F(a)(6), 15 U.S.C. § 78u-6(a)(6).

¹⁴ Whistleblower Award Proceeding File No. 2022-38, Rel. No. 94398 (Mar. 11, 2022) (quoting *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767,781-82 (2018)).

a showing of extraordinary circumstances.”¹⁵ In applying Rule 21F-8(a), the critical question is whether the facts and circumstances that gave rise to the procedural deficiency were sufficiently beyond the control of the claimant to support an exercise of discretionary authority under Exchange Act Rule 21F-8(a).¹⁶ We do not believe the record supports the conclusion that Claimant 2 was prevented from submitting information to the Commission. More importantly, however, Claimant 2 is not being denied because of any procedural requirements, but because he/she did not provide information to the Commission that led to the success of the Covered Action.¹⁷

Finally, the record does not support the conclusion that Claimant 2 was the author of the anonymous October TCR. After having reviewed the Preliminary Determination, which states that the investigation was opened based on an anonymous October TCR, Claimant 2 contends for the first time in his/her request for reconsideration that he/she *may* have been the individual to have submitted the anonymous October TCR. Claimant 2 contends that because of stress, and Redacted, he/she could have submitted the tip in October and forgotten about it. Claimant 2 provided a sample of what an anonymous tip from him/her could have looked like, and states that if he/she sent a tip it would have been anonymous, using an alias and sent through the online portal, not through an attorney. Claimant 2 also states that he/she was using aliases in materials provided to the Commission including, Redacted, Redacted, Redacted, Redacted, Redacted, and possibly others, and that if he/she were leaving an anonymous tip on an official form he/she most likely would have used the alias Redacted, Redacted or Redacted to have it be an obvious alias.

As an initial matter, Claimant 2 did not claim that he/she had provided any tip to the Commission, much less a tip in or around October Redacted, in his/her whistleblower award application (or in his/her email to Enforcement staff after the case was filed). Furthermore, Claimant 2 does not contend now that he/she was the author of the October TCR, just that it is a possibility. Claimant 2 does not provide support for the theory that he/she provided the October TCR beyond his/her own speculation. According to a declaration provided by OWB staff, which we credit, the October TCR was not submitted by any of the aliases offered by Claimant 2 in

¹⁵ See Exchange Act Rule 21F-8(a), 17 C.F.R. § 240.21F-8(a).

¹⁶ Whistleblower Award Proceeding File No. 2023-33, Rel. No. 96765 at 4 (Jan. 30, 2023).

¹⁷ Even if Claimant 2’s request could also be construed as a request for the Commission to exercise its Section 36(a) exemptive authority, we decline to do so, as the record supports the conclusion that Claimant 2 did not provide information to the Commission that led to the success of the Covered Action. Section 36(a) grants the Commission the authority in certain circumstances to “exempt any person ... from any provision or provisions of this title or 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 have otherwise received.” Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34326 (June 13, 2011). Granting an exemption under circumstances where a whistleblower did not provide information that was in fact “useful” and the information did not lead to the success of a covered action is contrary to the purpose of the whistleblower program, the public interest, and the protection of investors.

his/her reconsideration request. Accordingly, the record does not support the conclusion that Claimant 2 submitted the October TCR.

III. Conclusion

Accordingly, it is ORDERED that Claimant 1's and Claimant 2's whistleblower award applications be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary