

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 81200 / July 25, 2017

WHISTLEBLOWER AWARD PROCEEDING

File No. 2017-12

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On March 3, 2017, the Claims Review Staff issued a Preliminary Determination related to Notice of Covered Action Redacted which was issued in connection with the Commission's successful resolution of the above-referenced enforcement action (the "Covered Action"). The Preliminary Determination recommended that Redacted Redacted ("Claimant") receive a whistleblower award because Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

Further, the Claims Review Staff recommended that Claimant's award be set in the amount of Redacted percent Redacted of the monetary sanctions collected or to be collected in the Covered Action, which will yield an award of almost \$2.5 million. In reaching this recommendation, the Claims Review Staff considered the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, in relation to the facts and circumstances of Claimant's application.¹

On March 7, 2017, Claimant provided written notice to the Commission of Claimant's decision not to contest the Preliminary Determination within the 60-day

¹ The Preliminary Determination also recommended that a whistleblower award claim filed by a second claimant be denied. This claimant did not seek reconsideration of the Preliminary Determination and, therefore, the Preliminary Determination as to that claimant became the final order of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

deadline set out in Rule 21F-10(e) promulgated under the Exchange Act, 17 C.F.R. § 240.21F-10(e).

Upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. § 240.21F-10(f), (h), the Preliminary Determination of the Claims Review Staff is adopted, including the award determination. The record demonstrates that Claimant has satisfied the criteria for an award. Claimant, an employee of a domestic government agency, had become aware of certain improper conduct by a company.² Claimant then reported these suspicions to the Commission, and provided supporting documentation, which caused the Commission to open an investigation.³ Claimant then continued to provide the

² Generally speaking, an employee of a federal, state, or local government agency can – subject to the two statutory exceptions discussed below – be eligible for an award under our whistleblower program. As we explain, neither of the two statutory exceptions prevents an award here. The first exception prohibits paying a whistleblower award to an employee of “an appropriate regulatory agency.” See Exchange Act § 21F(c)(2)(A)(i), 15 U.S.C. § 78u-6(c)(2)(A)(i). Exchange Act Rule 21F-4(f) defines an “appropriate regulatory agency” by reference to Section 3(a)(34), which in turn defines an “appropriate regulatory agency” as the Commission and any of the various banking agencies listed in the definition, including the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. This exception has no potential application to Claimant given the governmental authority at which Claimant worked.

The second exception prohibits an award to an employee of “a law enforcement organization.” See Exchange Act § 21F(c)(2)(A)(v), 15 U.S.C. § 78u-6(c)(2)(A)(v), and Exchange Act Rule 21F-8(c)(1), 17 C.F.R. § 240.21F-8(c)(1). While neither the Exchange Act nor the whistleblower rules define “law enforcement organization,” the term is generally understood as having to do with the detection, investigation, or prosecution of potential violations of law. See Exchange Act § 24(f)(4)(B) and (C), 15 U.S.C. § 78x(f)(4)(B) and (C) (defining foreign and state law enforcement authorities as those that are “empowered ... to detect, investigate, or prosecute potential violations of law”). To be sure, certain components of Claimant’s governmental employer have law enforcement responsibilities, but those responsibilities are housed in a separate, different component of the agency at which Claimant works. This raises an interpretive question whether the exclusion for employees of a “law enforcement organization” applies to an entire governmental agency that may contain components with law enforcement responsibilities, or only to those divisible sub-agency components that perform the law enforcement responsibilities. While we do not address that question for all cases given the myriad permutations of domestic governmental entities and agencies, here, we believe that the appropriate answer is that the arguments for distinguishing the sub-agency that possesses the law enforcement responsibilities from the broader governmental agency are sufficiently strong to allow us to make an award to Claimant. In reaching this conclusion, we are mindful that in ordinary usage, an “organization” is any structure within which individuals work toward a common purpose or goal. See definitions of “organization” in *Cambridge Dictionary* at <http://dictionary.cambridge.org/us/dictionary/english/organization> (“a group whose members work together for a shared purpose in a continuing way”); *MacMillan Dictionary* at <http://www.macmillandictionary.com/us/dictionary/american/organization> (“a group of people who have a particular shared purpose or interest, for example a political party or charity”); *Merriam-Webster Dictionary* at <https://www.merriam-webster.com/dictionary/organization> (“an administrative and functional structure (such as a business or a political party)”. Congress’s use of the word “organization” in Section 21F(c)(2)(A)(v) – as opposed to “agency” or “authority” – suggests that it is reasonable to interpret the exclusion flexibly and, in appropriate cases such as this one, to apply it only to employees of a clearly separate agency component that performs law enforcement functions, rather than to all employees of an entire agency that happens to have been granted law enforcement powers among its many other separate responsibilities and powers.

³ We note that the record is clear that this is not a situation where a claimant sought to circumvent the potential responsibilities that his or her government agency might have to investigate or otherwise take

Commission with specific, timely, and credible information, helpful documents, significant ongoing assistance, and relevant testimony that accelerated the pace of the investigation.

Conclusion

Accordingly, it is hereby ORDERED that Claimant shall receive an award of Redacted percent Redacted of the monetary sanctions collected in this Covered Action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Brent J. Fields
Secretary

action for the misconduct. We express no view on how an award determination might differ under that alternative circumstance.