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 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

On Redacted, staff in the Commission’s Division of Enforcement (“Enforcement”) opened an investigation into Redacted (the “Company”) based on information received from a source other than Claimant—more specifically, from Redacted. Approximately six months later, on Redacted, the Commission filed a civil injunctive action alleging that the Company and Redacted (collectively, “Defendants”), had violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder.

The Commission’s complaint alleged that from Redacted the Company
In reality, according to the

The complaint also alleged that Defendants
despite having received a

letter from the Commission’s staff directing the Company not to

On the Commission filed an amended complaint that named
and that repeated the allegation of without alleging any
additional instances of
1 The Court granted the Commission’s motion for summary judgment against Defendants on liability and, on entered a final judgment that ordered Defendants each to pay a $ civil penalty and held them jointly and severally liable for disgorgement of $ of proceeds and $ of pre-judgment interest.

On the Office of the Whistleblower (“OWB”) posted Notice of Covered Action for the Covered Action. Claimant filed a timely whistleblower award application. In the application, Claimant self-identifies as
and asserted that Claimant had provided information to
Claimant further asserted, as grounds for an award:

II. Preliminary Determination and Response

A. Preliminary Determination

The CRS preliminarily determined to deny Claimant’s award claim because Claimant’s information did not lead 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. In reaching this preliminary determination, the CRS considered, among other record evidence, a declaration (“Declaration”) from an Enforcement staff member assigned to the investigation (“Staff”). In the Declaration, the Staff explained that Claimant had submitted a tip through the Commission’s online portal on more than after the Commission filed its initial complaint, and that Claimant also had spoken with the Staff by telephone just once on In both the tip and the telephone call, according to the Declaration,
Claimant alleged that a Company employee had after the Company had received the letter instructing it not to do so. Moreover, the Declaration explained, the Staff was previously aware of as alleged in the initial complaint, and was unable to corroborate Claimant’s allegation with respect to As a result, the allegation of remained unchanged in the Commission’s amended complaint filed in and Claimant’s information did not contribute in any way to either the investigation or the litigation of the Covered Action.

B. Response

After requesting and reviewing the record supporting the Preliminary Determination, Claimant submitted a timely written request for reconsideration. In the request, Claimant does not dispute that Claimant’s tip was submitted after the Commission filed its action or that the Staff was already aware of by the Company, as alleged in the initial complaint. Rather, Claimant focuses on Claimant’s asserted interactions with agents at the questions from agents at the Claimant contends that Claimant answered and provided them with and used to support the case. Claimant contends that Claimant was told over the phone that while not “‘the smoking gun’, was beneficial and helped support the case.” In the response, Claimant does not identify any additional communications with the Staff; nor does Claimant attempt to explain how contributed to the Covered Action.

III. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action. For the reasons that follow, and based on our review of the entire record, including a supplemental declaration (“Supplemental Declaration”) from the Staff, we find that Claimant’s information did not lead to the success of the Covered Action.

Under the whistleblower rules, as relevant here, an individual’s original information leads to the success of an action where it causes 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 under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual’s original information

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significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.\(^3\) In determining whether an individual’s information significantly contributed to an action, we consider factors such as whether the information allowed us to bring: the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.\(^4\) The individual’s information must have been “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.\(^5\)

Claimant does not satisfy Rule 21F-4(c)(1) as the investigation that culminated in the Covered Action was opened in approximately ten months before Claimant submitted Claimant’s tip in

Claimant also does not satisfy Rule 21F-4(c)(2) as none of Claimant’s information was used in or contributed in any way to the Covered Action. Claimant submitted the tip approximately after the Commission filed its initial complaint in federal district court in Claimant does not dispute that the Staff was already aware of the Company, as alleged in the initial complaint, by the time Claimant submitted the tip or that the Commission’s allegation of remained unchanged in the amended complaint filed in Nor does Claimant’s response to the Preliminary Determination offer any reason to doubt the Staff’s Declaration that none of the information provided by Claimant to the Staff in the tip and subsequent telephone call contributed in any way to either the investigation or the litigation of the Covered Action.

\(^3\) 17 C.F.R. § 240.21F-4(c)(1)-(2).


As explained above, Claimant’s response to the Preliminary Determination focuses on Claimant’s asserted acts of answering questions from *** agents and providing to ***. But the Supplemental Declaration makes clear that the Staff did not participate in any meetings between Claimant and ***. Moreover, Staff confirmed that it: (a) does not know how, or even if, the *** were used by *** as to whether the *** that Claimant contends in Claimant’s Response; and (c) did not receive any information from *** or any documents that had ***.

In addition, the Supplemental Declaration makes clear that the Staff never told or otherwise implied to Claimant that the information Claimant asserted provided to *** helped support the Covered Action. The Staff further attested in the Supplemental Declaration that even if Claimant’s asserted *** were beneficial to *** investigation or the resulting *** that information was not useful to and did not in any way contribute to either the investigation or litigation of the Covered Action. Claimant has offered no credible assertion or evidence to the contrary, and we therefore credit the Declaration and Supplemental Declaration.6

IV. Conclusion

Accordingly, it is ORDERED that Claimant’s whistleblower award claim be, and hereby is, denied.

By the Commission.

Eduardo A. Aleman
Deputy Secretary

6 We do not read Claimant’s submissions as making any whistleblower award claim with respect to ***. In particular, Claimant’s whistleblower award application on Form WB-APP fails to mention *** even though it did specify the name, docket number, and filing date of the Commission’s civil enforcement action. Even if Claimant were to seek an award with respect to *** on the ground that it was a “related action,” Claimant would face the obstacle that qualification for an award in the Commission’s covered action is a prerequisite to qualification for an award in a “related action.” See Exchange Act Section 21F(a)(5), 15 U.S.C. § 78u-6(a)(5) (defining a “related action” as based upon the same original information provided by the whistleblower that led to the successful enforcement of the Commission action); Exchange Act Rules 21F-3(b) & 11(a), 17 C.F.R. §§ 240.21F-3(b) & 240.21F-11(a); Order Determining Whistleblower Award Claim, Rel. No. 34-84503 at n.4 (Oct. 30, 2018) (“The Commission may make an award to a whistleblower in connection with a related action only if the Commission has determined that the whistleblower is entitled to an award for a Commission covered action.”).