

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95714 / September 9, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-82

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

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 covered action (the “Covered Action”).¹ 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 instituted cease-and-desist proceedings against Redacted (the “Company”) and Redacted (the “Individual”) in the Covered Action, charging the respondents with Redacted

Redacted Pursuant to the settlement, the Company agreed to pay total monetary sanctions of more than Redacted while the Individual consented to pay a

¹ The CRS also preliminarily denied the award claims of two other claimants. Those claimants did not seek reconsideration of the Preliminary Determinations, and therefore the denials of their claims were deemed to be the Final Orders of the Commission under Exchange Act Rule 21F-10(f).

civil penalty of ^{Redacted} Both respondents agreed to cease and desist from future violations of the federal securities laws.

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. Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

On ^{Redacted} the CRS issued a Preliminary Determination recommending that Claimant’s claim be denied because Claimant did not provide information that led to the successful enforcement 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. The CRS concluded that Claimant’s 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 determined that Claimant’s information did not significantly contribute to the investigation that resulted in the Covered Action (the “Investigation”) because Claimant’s information concerned ^{Redacted} violations in ^{***} (the “Other Country”), which Enforcement staff could not substantiate, whereas the Covered Action focused on conduct in ^{Redacted} (the “Country”).

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.² Claimant principally argues that the record does not demonstrate that Claimant’s information “could not have, in any way, been a bargaining chip in the SEC’s settlement negotiations with [the Company].” Claimant argues that the settlement in the Covered Action could have been “a package deal” addressing the charges related to Country as well as the charges related to Claimant’s information regarding Other Country. In support of this position, Claimant, among other things, points to ^{Redacted} stating that the Company resolved investigations “regarding [Country] and [Other Country].”

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.³ As relevant here, under Exchange Act Rules 21F-4(c)(1) and

² See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

³ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

(2),⁴ 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;⁵ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁶

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.⁷ 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.⁸

Claimant does not qualify for an award under either of the above-described provisions. First, the record demonstrates that the Investigation was opened in ^{Redacted} more than two years before Claimant began providing his/her information to the Commission. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

Second, even assuming that Claimant’s information caused the Commission to inquire into conduct in Other Country, the Commission did not bring a successful action in whole or in part based on conduct that was the subject of Claimant’s information, nor did Claimant’s information significantly contribute to the Investigation. It is undisputed that the information Claimant provided to the Commission did not address conduct in Country, but instead related to conduct in Other Country. And while the record shows that Enforcement staff investigated conduct in Other Country, the violations charged in the Covered Action only pertain to conduct in Country. Enforcement staff confirmed that Claimant’s information was not used in nor had any impact on the charges brought in the Covered Action.

Further, Claimant’s information did not assist with settlement discussions or otherwise help resolve the Covered Action. Enforcement staff assigned to the Investigation have confirmed, in a supplemental declaration, which we credit, that Enforcement staff had already determined, prior to the beginning of settlement discussions, that there was not sufficient evidence for the Commission to bring charges based upon conduct in Other Country.

⁴ We construe the Response as applicable only to subsections 1 and 2 of Rule 21F-4(c). Consequently, the analysis that follows addresses only those two subsections of the provision.

⁵ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁶ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ 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 (same).

⁸ Exchange Act Rel. No. 85412 at 8-9.

Accordingly, when the staff opened settlement discussions, no mention was made of conduct in Other Country, nor were the settlement discussions based upon or aided by any information provided by Claimant. Staff did not raise any Other Country conduct during subsequent settlement discussions, nor did the respondents' offers of settlement, which the Commission accepted, address conduct in Other Country. Accordingly, we conclude that Claimant's information did not cause the Commission to inquire into different conduct and then bring an action based upon conduct that was the subject of that information, nor did Claimant significantly contribute to the success of the Covered Action.⁹

For these reasons, Claimant is not entitled to an award.¹⁰

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.

Vanessa A. Countryman
Secretary

⁹ Claimant relies on a ^{Redacted} referring to Other Country. But as noted above, the Covered Action makes no mention of conduct in Other Country, and Enforcement staff determined prior to commencement of settlement discussions that the staff had not developed sufficient evidence to warrant charges based upon conduct in Other Country.

¹⁰ Claimant's Response also requests that certain materials subject to an alleged Freedom of Information Act ("FOIA") request made "over three years ago" be included in the record. Claimant, who is represented by counsel, notes that he/she "never received the requested documents[, nor] did the SEC ever respond to our FOIA request." Claimant concludes that he/she has thus made "good faith efforts" to attach materials to his/her whistleblower application pursuant to Exchange Act Rule 21F-12(a)(3). Yet Claimant's FOIA "request" appears to rest upon a single footnote in Claimant's whistleblower application submission to OWB. FOIA requests must be submitted to the Commission's Office of FOIA Services ("OFS"), the centralized unit that handles all FOIA request for the Commission and whose website provides procedures on submitting a request directly to OFS.