

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 91903 / May 17, 2021
WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-49

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award of approximately Redacted, equal to *** percent *** of the monetary sanctions collected in the above-referenced Covered Action.¹ The CRS recommended the denial of the award application from Redacted (“Claimant 2”), as well as the denial of the award applications submitted by Redacted (“Claimant 3”), Redacted (“Claimant 4”), and Redacted (“Claimant 5”).² Claimants 1, 2, 4, and 5 submitted timely notices contesting the preliminary determinations of their award claims.³

¹ Pursuant to Rule 21F-4(d), we are treating the enforcement action Redacted (the “Individual Action”) together with Redacted (the “Company Action”) as a single Covered Action as they both arise from the same underlying facts. The Individual Action and Company Action are collectively referred to as the “Covered Action.”

² In addition, the CRS recommended that Claimant 1’s claim for an award in connection with Redacted Redacted be denied.

Because Claimant 1 did not contest the preliminary denial, the CRS’s preliminary determination as to the denial of the Redacted became the final order of the Commission pursuant to Exchange Act Rule 21F-11(f); 17 C.F.R. § 240.21F-11(f).

³ Claimant 3 did not contest the Preliminary Determination. Accordingly, on Redacted the Preliminary Determination with respect to Claimant 3’s award claim became the Final Order of the Commission through

whistleblower award applications within 90 days.⁶ Claimants 1, 2, 4, and 5 all filed timely whistleblower award claims.

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Claimant 1 also sought an award based on Redacted as a related action to the Covered Action.

C. The Preliminary Determinations

The CRS⁷ issued Preliminary Determinations⁸ recommending that: (1) Claimant 1 receive an award of *** of the monetary sanctions collected in the Covered Action⁹; (2) the award claims of Claimants 2, 3, 4, and 5 in the Covered Action be denied; and (3) the award claims of Claimants 1 and 3 in connection with Redacted be denied. The CRS preliminarily determined that while Claimant 1 provided information that the staff previously lacked and that was useful in negotiating a settlement of one of the proceedings that comprised the Covered Action, Claimant 1's information was provided almost one year after the staff's investigation had begun, Claimant 1's information only supported the Individual Action, which resulted in a monetary sanction of Redacted and that Claimant 1 delayed almost five years in reporting to the Commission.¹⁰

The CRS recommended that Claimant 2's award claim be denied on the grounds that Claimant 2 did not voluntarily provide information to the Commission as required by Exchange

⁶ See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

⁷ Rule 21F-10(d) under the Exchange Act provides that the CRS will "evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in these rules." 17 C.F.R. § 240.21F-10(d); see also Rule 21F-11(d).

⁸ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁹ Ten percent is the minimum statutory award when there is a single meritorious claimant, and thirty percent the maximum. When there are multiple meritorious claimants, the total amount awarded to the meritorious claimants in the aggregate shall not be less than 10 percent and not greater than 30 percent. See Exchange Act Rule 21F-5, 17 C.F.R. § 240.21F-5.

¹⁰ The Preliminary Determinations determined that Redacted did not use any information provided by Claimant 1, Claimant 1 was not eligible for an award in connection with Redacted. See Exchange Act Rule 21F-11, 17 C.F.R. §240.21F-11.

Act Rule 21F-4(a).¹¹ At the time, the record showed that ^{Redacted} and the Enforcement Staff separately requested information from Claimant 2 prior to Claimant 2 providing information to Enforcement staff. The CRS also recommended that Claimant 4's and Claimant 5's award claims be denied because their information did not lead to the success of the Covered Action as required under Exchange Act Rule 21F-4(c).¹² The record showed that Claimant 4 did not provide any new information relevant to the action, and Claimant 5's information was not forwarded to Enforcement staff.¹³

D. Claimant 1's Response to the Preliminary Determination

Claimant 1 submitted a timely written response contesting the CRS's Preliminary Determination of a ^{***} percent award.¹⁴ Claimant 1 contends that the information Claimant 1 provided to Enforcement staff was relevant in the Covered Action against the Company and in civil and criminal actions against ^{Redacted} even if such information was not ultimately used by the Enforcement Staff in the Company Action. Claimant 1 also argues that the CRS did not adequately weigh the Rule 21F-6 factors used to determine awards. Claimant 1 provided further detail regarding claims of harassment and retaliation Claimant 1 suffered because of his/her internal reporting of the misconduct, including threats and harassment suffered since ^{***} and the Company's dissolution of ^{Redacted}. Claimant 1 also claims wrongful termination by the Company and significant financial hardship as a result.¹⁵

E. Claimant 2's Response to the Preliminary Determination

Claimant 2 submitted a timely written response contesting the Preliminary Determination. Claimant 2 contends that Claimant 2 provided information voluntarily before

¹¹ See Exchange Act Rule 21F-4(a), 17 C.F.R. § 240.21F-4(a), which provides that a submission of information is considered voluntary if, among other things, it is provided "before a request, inquiry, or demand that relates to the subject matter of [the claimant's] submission is directed to [the claimant] . . . (i) [b]y the Commission; [or] (ii) [i]n connection with an investigation, inspection, or examination by . . . any self-regulatory organization; or (iii) [i]n connection with an investigation by . . . any other authority of the Federal government."

¹² See *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897 at 11 (Mar. 19, 2018).

¹³ The Preliminary Determinations also determined that because Claimant 3 was not eligible for an award in the Covered Action, Claimant 3 did not qualify for an award in any related action. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a).

¹⁴ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

¹⁵ Claimant 1 did not contest the CRS's preliminary determination as to the denial of a related action award claim with regard to ^{Redacted}. Accordingly, the CRS's preliminary determination as to the denial of the related action award became the final order of the Commission pursuant to Exchange Act Rule 21F-11(f); 17 C.F.R. § 240.21F-11(f).

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A. Claimant 1

The record on reconsideration demonstrates that Claimant 1 voluntarily provided original information to the Commission that contributed to an existing investigation that led to the successful enforcement of the Covered Action. As relevant here, information leads to the success of an enforcement action if it: (1) was “sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation... or to inquire concerning different conduct as part of a current... investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information” or (2) significantly contributed to the success of a Commission judicial or administrative enforcement action.²¹ Here, Claimant 1 voluntarily submitted a tip to the Commission in ^{Redacted} that alleged misconduct by the Individual and ^{Redacted} relating to ^{Redacted} which significantly contributed to the success of the Individual Action. Accordingly, Claimant 1 qualifies for a whistleblower award.

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²¹ See Exchange Act Rule 21F-4(c)(1), (2), 17 C.F.R. § 240.21F-4(c)(1), (2). See also Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at *16 (Mar. 26, 2019); Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of *** percent *** is appropriate. In reaching that determination, we assessed the following facts: (1) Claimant 1’s information assisted Enforcement staff during settlement negotiations and contributed to Redacted Redacted charges in the Individual Action; (2) Claimant 1’s information contributed only to the success of the Individual Action, and did not contribute to the success of the much larger Company Action; (3) Claimant 1 delayed in reporting information to the Commission, providing it more than five years after learning of the violations and approximately one year after Claimant 2 provided information to Enforcement staff; (4) Enforcement staff found Claimant 2’s information more valuable and of more assistance than the information provided by Claimant 1; and (5) Claimant 1 suffered professional and personal hardship as a result of Claimant 1’s whistleblowing activities. In response to Claimant 1’s argument on reconsideration that allegedly valuable information submitted to the Commission should be considered and weighed positively—regardless of whether such information was used by Enforcement staff in the Company Action—we note that position is contrary to the Exchange Act and the whistleblower program.²² The whistleblower program rewards meritorious claimants based upon, among other things, the significance of their information and how that information helped Enforcement staff bring a successful enforcement action.²³ As noted above, Claimant 1’s information did not assist Enforcement staff’s resolution of the Company Action, but did provide assistance with regard to the Individual Action—and the monetary sanctions ordered as a result of the Individual Action were only a small fraction of those ordered in the Company Action. In short, the value and significance of Claimant 1’s information, coupled with the delayed reporting to the Commission, warrant only a *** percent award.

B. Claimant 2

The record on reconsideration demonstrates that Claimant 2 voluntarily provided original information to the Commission that contributed to an existing investigation that led to the successful enforcement of the Covered Action. Claimant 2 provided new evidence demonstrating that in *** Claimant 2 gave the same information to Redacted Redacted prior to being contacted by Redacted or the Commission.²⁴ Claimant 2’s information and continued assistance significantly contributed to the success of the Company Action and the Individual Action. Accordingly, the record demonstrates that Claimant 2

²² See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

²³ See Rule 21F-6(c).

²⁴ See Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2). The “same information” requirement of Rule 21F-4(a)(2) is satisfied when the information “relates to the same subject matter of” the Commission’s later inquiry. See *Order Determining Whistleblower Award Claims*, Release No. 34-82181, n.3 (Nov. 30, 2017).

voluntarily provided original information to the Commission that significantly contributed to an existing investigation that led to the successful enforcement of the Covered Action.²⁵ Claimant 2 qualifies for a whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of *** percent *** is appropriate. In reaching that determination, we assessed the following facts: (1) there were no negative factors at issue in Claimant 2's submission; (2) Claimant 2 provided information shortly after Enforcement staff's investigation began and provided continued assistance to Enforcement staff during the course of its investigation, including by providing insight into Company documents, answering questions from Enforcement staff as staff prepared to take witness testimony, and, afterwards, confirming information obtained during testimony; (3) Claimant 2's assistance helped Enforcement staff in the Company Action and the Individual Action; and (4) Enforcement staff found Claimant 2's information more valuable and of more assistance than the information provided by Claimant 1.

C. Claimant 4

The record demonstrates that Claimant 4's information does not satisfy Exchange Act Rule 21F-4(c)(1) as the investigation was opened in Redacted based on information provided by the Company, not Claimant 4. The information submitted by Claimant 4 also did not significantly contribute to the success of the Covered Action pursuant to Exchange Act Rule 21F-4(c)(2). Claimant 4's information was provided in Redacted at which time the staff's investigation was already at an advanced stage and Enforcement staff had already collected voluminous documents and testimony over the course of the prior year. The information provided by Claimant 4—including Redacted—did not provide any materially new information to the Enforcement staff. In response to Claimant 4's reconsideration request, Enforcement staff confirmed in a supplemental declaration that the information provided by Claimant 4 did not advance Enforcement staff's investigation. Enforcement staff also confirmed that communications with Claimant 4 cited in Claimant 4's reconsideration request did not provide the staff with any new information that contributed to the investigation.

D. Claimant 5

The record demonstrates that Claimant 5's information does not satisfy Exchange Act Rule 21F-4(c)(1) or Rule 21F-4(c)(2) as Claimant 5's information did not cause Enforcement to open the investigation, nor did Claimant 5's information significantly contribute to the success of

²⁵ See Exchange Act Rule 21F-4(c)(1), (2), 17 C.F.R. § 240.21F-4(c)(1), (2). See also Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at *16 (Mar. 26, 2019); Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

the Covered Action. In response to Claimant 5's request for reconsideration, Enforcement staff confirmed that Claimant 5's email and TCR was reviewed by Enforcement staff at or around the time Claimant 5 sent it and that it was not relevant to the staff's investigation.

III. Conclusion

Accordingly, it is hereby ORDERED that (1) Claimant 1 shall receive an award equal to *** percent *** of the monetary sanctions collected in the Covered Action, and that (2) Claimant 2 shall receive an award equal to Redacted percent *** of the monetary sanctions collected in the Covered Action.

It is further ORDERED that Claimant 4's and Claimant 5's whistleblower award applications in the Covered Action be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary