

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95247 / July 12, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-63

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”). Claimant filed a timely response contesting the preliminary denial.¹ For the reasons discussed below, Claimant’s award claim is denied.

I. Background

A. The Covered Action

On Redacted the Commission instituted settled cease-and-desist proceedings in the Covered Action, charging Redacted (the “Company”) with violations of Redacted

Redacted The Commission alleged that Redacted

Redacted Pursuant to the settlement, the Company agreed to pay

¹ The CRS also preliminarily denied the award claims of three 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).

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 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 concluded that Enforcement staff had already opened the investigation that led to the Covered Action approximately four years before Claimant submitted his/her information, and that Claimant’s information was otherwise vague, insubstantial, and did not warrant any further investigative efforts by the staff. The CRS also determined that the staff did not use any information from Claimant’s submission.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.² Claimant principally argues that the CRS did not adequately review Claimant’s award application, arguing that Claimant based his/her award claim on a tip sent to Company management in ^{Redacted} alleging ^{Redacted}. Claimant argues that Claimant deserves credit for the results of any internal investigation conducted by the Company as a result of his/her tip that was provided to the Commission and that led to the success of the Covered Action. Claimant also argues that the CRS ignored certain documents cited in his/her whistleblower application.

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 Additionally, and as relevant here, there are three ways in which original information can be deemed to lead to a successful enforcement action. Under

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).

Exchange Act Rules 21F-4(c)(1) and (2), 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;⁴ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁵

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.⁶ 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.⁷

A whistleblower will also be deemed to have provided original information that led to the successful enforcement of a covered action if the whistleblower meets all the criteria of Exchange Act Rule 21F-4(c)(3), which requires the following to be established:

- (1) the whistleblower reported original information through an entity’s internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time the whistleblower reported them to the Commission;
- (2) the entity later provided the information to the Commission or provided results of an audit or investigation initiated in whole or in part in response to information the whistleblower reported to the entity;
- (3) the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of [Rule 21F-4]; and
- (4) the whistleblower submitted the same information to the Commission in accordance with the procedures set forth in Rule 21F-9 within 120 days of providing it to the entity.⁸

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

⁵ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

⁶ 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.

⁷ Exchange Act Rel. No. 85412 at 8-9.

⁸ Exchange Act Rule 21F-4(c)(3), 17 C.F.R § 240.21F-4(c)(3).

Claimant does not qualify for an award under the above-described provisions. First, the record demonstrates that the Commission’s investigation which led to the Covered Action (the “Investigation”) was opened approximately four years before Claimant submitted his/her information to the Commission. Accordingly, Claimant’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant’s tip to the Commission did not cause the staff to inquire into different conduct or significantly contribute to the Investigation. Enforcement staff reviewed Claimant’s tip and determined that it included only vague allegations and did not provide any material beyond what the staff had already uncovered much earlier in the Investigation. Claimant’s information thus was not used by the staff during the Investigation, had no impact on the scope of the Investigation, and did not significantly contribute to the Investigation.

Lastly, Claimant is not entitled to an award under Rule 21F-4(c)(3). While the record shows that Claimant anonymously reported his/her information to the Company using its internal compliance procedures, and subsequently provided the same information to the Commission within 120 days, the record does not demonstrate that Claimant meets the other elements of Rule 21F-4(c)(3). According to a supplemental declaration prepared by Enforcement staff assigned to the Investigation, which we credit, the Company had begun its internal investigation regarding misconduct in ^{Redacted} by ^{Redacted} approximately four years before Claimant submitted his/her concerns to the Company. Between the beginning of the Investigation and the time of Claimant’s ^{Redacted} tip, the Company provided significant information and documents to the staff; further, Company counsel had provided several presentations to the staff regarding its findings. The staff confirms that the documents, information, and presentations provided to the staff prior to ^{Redacted} formed the basis for the charges in the Covered Action related to misconduct in ^{Redacted}. The staff also confirms that it did not recall receiving a copy of Claimant’s tip from the Company, and that any information the staff received from the Company after ^{Redacted} regarding misconduct in ^{Redacted} did not materially advance the Investigation or contribute to the charges in the Covered Action. We therefore conclude that Claimant cannot satisfy the elements of Rule 21F-4(c)(3).⁹

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

⁹ Claimant’s argument that the CRS ignored certain documents cited in his/her whistleblower application is without merit. Rule 21F-12(a)(3) states that the CRS and the Commission will consider, among other things, the “whistleblower’s Form WB-APP, including attachments, any supplemental materials submitted by the whistleblower before the deadline to file a claim for a whistleblower award for the relevant Notice of Covered Action, and any other materials timely submitted by the whistleblower in response. . . [t]o the Preliminary Determination . . . that was provided to the claimant.” Here, Claimant’s WB-APP demanded that the CRS review certain materials, including the Company’s offer of settlement, all communications between the Company and the staff regarding the Claimant’s information, and the “date (if one exists) on which the SEC closed the matter relating to the claimant’s TCRs.” However, Rule 21F-12 does not allow Claimant to access the Commission’s investigative files, nor does the act of demanding documents in the Claimant’s WB-APP or reconsideration request incorporate those documents into the record. Regardless, we find there is no evidence to support Claimant’s argument that the CRS ignored certain documents and the issue raised by Claimant is sufficiently addressed by the supplemental staff declaration discussed above.

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