

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 96667 / January 13, 2023

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-28

---

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. For the reasons discussed below, Claimant’s award claim is denied.

**I. Background**

**A. The Covered Action**

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings in the Covered Action, charging Redacted (the “Company”) with violations of Redacted. The Commission’s order stated that the Company Redacted

Redacted. The Commission’s order alleged that the Company Redacted

Redacted. To settle these charges, the Company agreed to pay a civil monetary penalty of Redacted

On <sup>Redacted</sup> 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 <sup>Redacted</sup> 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 preliminarily determined 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 noted that the investigation which led to the Covered Action (the “Investigation”) was opened based on a source other than Claimant. Further, the CRS noted that staff assigned to the Investigation never received any information from Claimant or had any communications with Claimant.

## **C. Claimant’s Response to the Preliminary Determination**

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.<sup>1</sup> Claimant argues that the record before the CRS was “deficient of information justifying denial of an award” to Claimant because the staff relied upon a single Enforcement staff declaration, while Claimant alleges that “many other SEC staff members” worked on the matter, including staff that Claimant spoke to and met with. Claimant argues that while the staff declaration states that Claimant’s tip was forwarded to staff assigned to a separate matter, the record does not identify the separate matter. Claimant also argues that he/she met with Commission staff at the staff’s request in <sup>Redacted</sup> in <sup>Redacted</sup> and then in <sup>Redacted</sup> in <sup>Redacted</sup> and that these meetings “formed the basis upon which the SEC brought an enforcement action against \*\*\*.” Claimant further contends that even if the staff assigned to the Investigation did not receive information directly from Claimant, the staff likely received and relied upon information Claimant provided to other Commission staff. Claimant requests that Claimant be allowed to depose the Enforcement staff member who prepared the declaration “and others involved in the investigation,” and that Claimant be allowed to review “all documentation the [CRS] utilized,” and that Claimant receive “all emails, correspondence, and other material regarding [Claimant’s] filing, as well as the administrative file for the [Investigation] at issue.”

## **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

---

<sup>1</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

enforcement of a covered action.<sup>2</sup> Additionally, and as relevant here, original information will be deemed to lead to a successful enforcement 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;<sup>3</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> For the reasons discussed below, Claimant’s information does not merit a whistleblower award in the Covered Action.

As an initial matter, the record shows that Claimant’s information did not cause the staff to open the Investigation. Claimant’s tip was forwarded to staff assigned to a separate and unrelated matter, not to staff assigned to the Investigation. Enforcement staff confirmed, in a sworn supplemental declaration, which we credit, that the Investigation began based upon a news article, not upon information provided by Claimant.<sup>7</sup> While Claimant argues that he/she provided information to the Commission more than one year before the Investigation began, and thus Claimant’s information may have been used by the staff, we do not find evidence in the record to support that conclusion. Accordingly, Claimant’s information did not cause the staff to open the Investigation.<sup>8</sup>

---

<sup>2</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>3</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>4</sup> See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>5</sup> 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).

<sup>6</sup> Exchange Act Rel. No. 85412 at 8-9.

<sup>7</sup> Claimant does not argue on reconsideration that he/she is the source of the information in the news article that caused the staff to open the Investigation.

<sup>8</sup> Claimant’s Response provided information from the <sup>Redacted</sup> that Claimant contends indicates that the Company was not under examination by the Commission as of <sup>Redacted</sup> more than one year after Claimant’s initial submission to the Commission. Claimant argues that this information shows that only after Claimant’s two meetings with Commission personnel did the Investigation begin, and that Claimant’s information likely contributed to the Investigation. However, this information does not show that Claimant’s information assisted the staff or otherwise contributed to the Investigation, only that the Investigation began later in time. And, as confirmed by Staff assigned to the Investigation, staff opened the Investigation based upon a news article, not based upon information from Claimant.

The record also does not show that Claimant’s information caused the staff to inquire into different conduct or significantly contributed to the ongoing Investigation. While one attendee at the <sup>Redacted</sup> meeting (the “Attendee”) was the <sup>Redacted</sup> <sup>\*\*\*</sup> that opened the Investigation, staff assigned to the Investigation confirmed that they did not receive, review, or use information from the Attendee that caused or contributed to the opening of the Investigation. The supplemental staff declaration confirms that the staff did not receive or review information from Claimant relating to the subject matter of the Investigation. The staff also confirmed that, aside from the Attendee, no one assigned to the Investigation attended either of the meetings with Claimant in <sup>Redacted</sup> or <sup>Redacted</sup> and the staff does not <sup>\*\*\*</sup> recall receiving, using, or reviewing any information from other Commission staff from the <sup>Redacted</sup> or <sup>Redacted</sup> offices, including staff from the Division of Enforcement or the Division of Examinations (formerly the Office of Compliance Inspections and Examinations), related to the subject matter of the Investigation. Accordingly, Claimant’s argument that the staff may have received and relied upon information originating from Claimant through other Commission staff is not persuasive. As we have stated, “the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower’s information actually had on the investigation.”<sup>9</sup> Here, while the Claimant provided information to the Commission prior to the opening of the Investigation, the record shows that Claimant’s information did not assist the staff during the Investigation or contribute to the Covered Action.

Lastly, Claimant’s argument that the record is incomplete is not meritorious. The record is based upon the sworn declarations of one of the primary staff attorneys assigned to the Investigation, as well as the submissions made by Claimant. To the extent that Claimant seeks declarations from staff members he/she spoke with, such information is unnecessary: the record already shows that staff assigned to the Investigation did not attend those meetings. Further, Claimant is not entitled to depose Commission staff assigned to the Covered Action, nor is Claimant entitled to “all emails, correspondence, and other material regarding [Claimant’s] filing” or the Commission’s investigative file. Exchange Act Rule 21F-12(a) lists the materials that form the basis for the Preliminary Determination and that Claimant may request from the Commission.<sup>10</sup> “These rules do not entitle [Claimant] to obtain from the Commission any materials . . . other than those listed in paragraph (a) of this section.”<sup>11</sup> Claimant requested and received the materials to which he/she was entitled under Rule 21F-12(a) and is entitled to no more.

For these reasons, Claimant does not qualify for a whistleblower award.

---

<sup>9</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 92542 at 4 (Aug. 2, 2021) (quoting Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90872 at 4 (Jan. 7, 2021)) (internal quotation marks omitted).

<sup>10</sup> See Exchange Act Rule 21F-10(e)(1).

<sup>11</sup> Exchange Act Rule 21F-12(b).

### **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.

J. Lynn Taylor  
Assistant Secretary