

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97222 / March 30, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-44

In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Office of the Whistleblower (“OWB”) issued a Preliminary Summary Disposition (“PSD”) in connection with the above-referenced Covered Action (the “Covered Action”) recommending that the whistleblower award application submitted by Redacted (“Claimant”) be denied.¹ Claimant filed a timely response contesting the PSD. For the reasons discussed below, OWB’s recommendation is adopted.

I. BACKGROUND

A. The Covered Action

On Redacted, the Commission instituted a settled administrative cease-and-desist proceeding against Redacted (“Company”) and Redacted (together, “Respondents”), alleging that the Respondents Redacted
Redacted
Redacted

¹ See Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-18.

According to the Order,

Redacted

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Without admitting or denying the findings, the Respondents consented to the entry of an Order finding that they violated the

Redacted

Redacted

The Commission ordered the Respondents to pay more than

Redacted

Redacted

which have been collected in full.

On Redacted OWB posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days.²

B. The Preliminary Summary Disposition

Claimant submitted a timely application for an award in connection with this Covered Action. OWB then issued a PSD recommending that Claimant's claim for award in the Covered Action be denied 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 because the information provided did not: (1) cause the Commission 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 (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

Enforcement staff assigned to the investigation that resulted in the Covered Action provided a declaration, which we credit, confirming that they did not receive or review any information from Claimant or have any communications with Claimant before or during the Covered Action investigation. Further, Claimant bases the claim for award on a tip submitted in Redacted ("Unrelated Company") and its executives

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

violated the securities laws by Redacted
concerning the Unrelated Company's operations. The Commission's Tips, Complaints, and Referrals ("TCR") system shows that Claimant's tip was forwarded to Enforcement staff in the Redacted
("Regional Office") in connection with a separate and unrelated investigation. Enforcement staff responsible for the Covered Action confirmed that Regional Office staff did not provide Claimant's information to staff responsible for the Covered Action.

C. Claimant's Response to the Preliminary Summary Disposition

Claimant submitted a timely written response (the "Response") contesting the PSD.³ In the Response, Claimant primarily makes the following arguments. First, Claimant contends that the award claim should not have been subject to the Preliminary Summary Disposition process because it deprived him or her of due process. Second, Claimant contends that his or her information concerned the same subject matter as the Covered Action – Redacted
Redacted – which should in itself entitle Claimant to an award in the Covered Action. Third, Claimant contends that his or her information should have been received by the investigative team for the Covered Action because Claimant sent it to the most senior leaders of the Division of Enforcement and because, according to Claimant, Regional Office staff are part of the same agency as staff responsible for the Covered Action.

II. ANALYSIS

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must have "voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action."⁴ As relevant here, information will be deemed to have led to a successful enforcement action if it was "sufficiently specific, credible, and timely to cause the staff to...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."⁵ Alternatively, information will be deemed to have led to a successful enforcement action where the information was "about conduct that was already under examination or investigation by the Commission" and the "submission 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

³ See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3).

⁴ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

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

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

was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.⁷

In challenging the PSD’s reasoning that Claimant’s information did not “lead to” the successful enforcement of the Covered Action, Claimant first contends that he/she was deprived of due process. We are unable to detect any evidence that OWB failed to follow the process to which Claimant was entitled under the Whistleblower Rules. In 2020, the Commission adopted Rule 21F-18 which specifically authorizes OWB to issue a PSD, in lieu of the Claims Review Staff issuing a Preliminary Determination, for certain categories of denials. For example, OWB may issue a PSD when “the information [claimant] submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with [claimant].” Even where OWB issues a PSD, the claimant has the ability to request the staff declaration underlying the recommended denial and to submit a response contesting the denial. Further, all contested PSDs are reviewed by the Commission.⁸ Here, Claimant’s award claim was appropriately considered through the PSD process. Rule 21F-18 sets forth the aforementioned process for adjudication of certain categories of denials and this process was followed here. There is nothing in the record indicating noncompliance with the process and procedures set forth in Rule 21F-18. Claimant was not entitled to any additional process beyond that set forth in Rule 21F-18.

Second, Claimant contends that his or her information concerned the same subject matter as the Covered Action, which should be a basis for an award. In view of the entirety of the record, we are unable to detect any nexus between Claimant’s information and the Covered Action. Claimant’s tip contains no allegations about the Respondents charged in the Covered Action, and the record is clear that the Enforcement staff responsible for the Covered Action did not receive Claimant’s information directly or indirectly through other Enforcement staff. That Claimant made allegations about ^{Redacted} with respect to the Unrelated Company does not mean that Claimant is eligible for an award for every future enforcement action involving similar securities law violations.⁹

Third, despite Claimant’s contention that the Covered Action staff must have been aware of *** information because Regional Office staff or SEC senior management had received it, the Staff Declaration, which we credit, confirms that the staff working on the Covered Action did

⁷ See *Order Determining Whistleblower Award*, Whistleblower File No. 2019-4, at 9, 2019 SEC LEXIS 615 at *16 (Mar. 26, 2019); see also *Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011) (in determining whether information significantly contributed to an enforcement action, the Commission will consider whether the information allowed the agency to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities).

⁸ Rule 21F-18(b)(6).

⁹ *Order Determining Whistleblower Award*, Release No. 90922 (Jan. 14, 2021).

not receive or review Claimant's information directly or indirectly through other staff. Eligibility is not based on what staff should have or could have done with the information, but whether the whistleblower's information actually contributed to the success of the covered action. For these reasons, Claimant's information did not lead to the success of the Covered Action and Claimant is not entitled to an award.

III. CONCLUSION

Accordingly, it is hereby ORDERED that Claimant's whistleblower award application be, and hereby is, denied.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary