

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95198 / July 5, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-60

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 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. 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 filed an enforcement action in federal district court (the “Covered Action”) charging ^{Redacted} (collectively, the “Defendants”) with perpetrating a securities fraud on investors in connection with their management ^{Redacted} (“Company”).¹ The fraud began in ^{***} when the Company ^{Redacted}

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In ^{Redacted}, the district court entered final judgments in favor of the Commission that ordered Defendants to pay a total of ^{Redacted} in disgorgement, prejudgment interest and civil monetary penalties. On ^{Redacted}, the Office of the Whistleblower posted Notice of Covered Action ^{Redacted} on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days, by ^{Redacted}. Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

On ^{Redacted}, the CRS issued a Preliminary Determination³ recommending that Claimant's claim be denied. The CRS based its denial recommendation on two grounds. First, it concluded that Claimant's submission of information to the Commission was not "voluntary," as required by Section 21F(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 21F-3 and 21F-4(a)(1) thereunder, because Claimant provided information in ^{***} after ^{***} Enforcement staff had already subpoenaed Claimant and taken Claimant's testimony in the Investigation on a subject matter related to his/her information. Second, the CRS determined that, under Rule 21F-8(c)(7), Claimant was ineligible for an award because Claimant had knowingly and willfully made false statements to Commission staff during Claimant's ^{***} testimony.

II. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.⁴ Claimant asserts that he/she is entitled to a whistleblower award because "the information that [Claimant] provided to the Commission was the catalyst for reopening and creating a new direction of inquiry for a case that had been closed in ^{Redacted}" and that it was "information that [Claimant] did not have available to [him/her] until after [the ^{***} Testimony] that formed the basis for [Claimant] contacting . . . the SEC [in ^{***}]." With regard to the first ground for the denial, Claimant contends that, when he/she reported to the Commission in ^{Redacted}, Claimant voluntarily provided the staff with new, original information unrelated to the information that was available to Claimant when he/she testified in ^{***}.⁵ With regard to the second ground for the denial, Claimant argues that, while he/she agrees there were discrepancies between the ^{***} and ^{***} testimonies, Claimant did not knowingly make false statements to the staff during the ^{***} Testimony.

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁴ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁵ Claimant acknowledges that certain questions that were asked by the staff during the ^{***} Testimony could be construed as being related to his/her ^{***} submission. However, Claimant states, back in ^{***}, the staff never made clear to him/her why these questions were being asked and that, in any event, Claimant answered the staff's questions as truthfully as possible with the knowledge that Claimant possessed at that time. Specifically, Claimant maintains that Claimant's "knowledge of what was actually going on with [the Company] ^{Redacted} was mostly limited ^{Redacted} [and that] not ^{Redacted}, did [Claimant] begin to receive information ^{Redacted}, that led [Claimant] to conclude that [his/her] ^{Redacted} previous perception that ^{Redacted} was in fact wrong and that the ^{Redacted} had in fact conducted illegal activities in their operation of the [Company] ^{Redacted}."

III. Analysis

Section 21F(b)(1) of the Exchange Act authorizes the Commission to pay monetary awards -- subject to certain limitations, exclusions, and conditions -- to individuals who “voluntarily” provide the Commission with original information about a violation of the securities laws that leads to a successful Commission judicial or administrative action in which the monetary sanctions exceed \$1,000,000. Exchange Act Rule 21F-4(a)(1) defines a voluntary submission as one that is provided “before a request, inquiry, or demand that relates to the subject matter of [the] submission” is directed to the whistleblower or his or her personal representative “[b]y the Commission.” The purpose of the rule is to “creat[e] a strong incentive for whistleblowers to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators ‘come knocking on the door.’”⁶

According to the Adopting Release for the whistleblower rules, the “determination of whether a prior inquiry ‘relates to the subject matter’ of a whistleblower’s submission will depend on the nature and scope of the inquiry and on the facts and circumstances of each case.”⁷ The Adopting Release adds that this test will “be met—and therefore the whistleblower’s submission [will not] be ‘voluntary’—even if the submission provides more information than was specifically requested, if it only describes additional instances of the same or similar conduct, provides additional details, or describes other conduct that is closely related as part of a single scheme.”⁸ As an example, the Commission noted that if the Enforcement staff “sends an individual an investigative request relating to a possible fraudulent accounting practice, we would ordinarily not expect to treat as “voluntary” for purposes of Rule 21F-4(a) a subsequent whistleblower submission from the same individual that describes additional instances of the same practice, or a different but related practice as part of an overall earnings manipulation scheme.”⁹

The subject matter of Claimant’s ^{***} submission was his/her allegation that ^{Redacted}
^{Redacted} ^{Redacted}
^{Redacted} . The ^{***} Investigation was opened in response to reports that the Company had
^{Redacted} , and the staff subpoenaed testimony from Claimant
to investigate this issue. Contrary to Claimant’s assertions in his/her reconsideration petition, the
^{***} Investigation and the staff’s inquires during Claimant’s ^{***} Testimony were closely
related to the subject matter of Claimant’s later submission in that both involved the ^{Redacted}
^{Redacted} . Moreover, during Claimant’s ^{***} Testimony, the
staff inquired specifically regarding ^{Redacted} , and both of these topics were

⁶ 75 Fed. Reg. at 70,490; *see also* 76 Fed. Reg. at 34,307 (stating that a “whistleblower award should not be available to an individual who makes a submission after first being questioned about a matter (or otherwise requested to provide information) by the Commission staff acting pursuant to any of [its] investigative or regulatory authorities”).

⁷ 76 Fed. Reg. at 34,308.

⁸ *Id.*

⁹ *Id.* at 34,308–34,309.

subjects of Claimant's *** submission. We thus conclude that Claimant's *** submission of information was not made voluntarily within the meaning of Exchange Act Rule 21F-4(a).

Having already determined that Claimant is ineligible for an award because the information he/she provided in *** was not submitted voluntarily, the Commission finds it unnecessary to reach the merits of the other ground for denial set forth in the Preliminary Determination.

IV. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant be, and it hereby is, denied.

By the Commission.

Jill M. Peterson
Assistant Secretary