

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 1 filed a timely whistleblower award claim.

B. The Preliminary Determination

On ^{Redacted}, the CRS issued a Preliminary Determination recommending that Claimant 1’s claim be denied because Claimant 1 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 reasoned that Claimant 1’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 Claimant 1 provided information approximately four years after the investigation had been opened and the information was already known to the staff; as such, the information did not contribute to the investigation.

C. Claimant 1’s Response to the Preliminary Determination

Claimant 1 submitted a timely written response (the “Response”) contesting the Preliminary Determination.² In the Response, Claimant 1 wrote that: (1) “not all of [the] information provided to [the Commission] was known to [Enforcement staff] at the time, [and] relevant parts of it seem to have been ignored or dismissed; and (2) not all the senior officials at [the Company] ^{Redacted} were punished; [and] (3) not all the beneficiaries ^{Redacted} were identified and dismissed from [the ^{Redacted} Company.]” Claimant 1 contends that he/she provided information, including ^{Redacted} involved ^{Redacted}, and believes that this information could not have come from the Company. Claimant 1 also urges the Commission to reopen the investigation to pursue ^{Redacted}.

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 Under Rule 21F-4(c), 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

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).

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 For the reasons discussed below, Claimant 1’s information does not merit a whistleblower award in the Covered Action because the record does not establish that the information led to a successful enforcement action, as required by Rule 21F-4(c).

First, the record demonstrates that the Commission’s investigation which led to the Covered Action (the “Investigation”) was opened approximately four years before Claimant 1 submitted his/her information to the Commission. Accordingly, Claimant 1’s information did not cause the staff to open the Investigation.

Second, the record shows that Claimant 1’s tip to the Commission did not cause the staff to inquire into different conduct or significantly contribute to the Investigation. According to the sworn declaration from Enforcement staff assigned to the Investigation, which we credit, by the time Claimant 1’s TCR was submitted to the Commission in ^{Redacted}, the Company had already identified all ^{Redacted} Claimant 1’s TCR submission and provided substantial documentary evidence concerning ^{Redacted} to Enforcement staff responsible for the Investigation. Further, because the TCR did not provide any new information, Enforcement staff responsible for the Investigation did not contact Claimant 1, or seek additional information from him/her. Enforcement staff noted that none of Claimant 1’s information helped advance the Investigation nor did it have any impact on the charges brought by the Commission.

Lastly, Claimant 1’s Response takes issue with the result of the Investigation and asks that the Commission “reopen the investigation” to pursue ^{Redacted} based on the information he/she provided. Claimant 1’s Response appears to contain new and updated information that was not part of Claimant 1’s original TCR. But new information provided during the reconsideration phase of an award determination may not be the basis for an award. Moreover, the issue whether the Commission should reopen the investigation is outside the scope of this adjudication. In considering Claimant 1’s Response, the sole question before the Commission is whether Claimant 1 is eligible for a whistleblower award based on the

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

⁵ See Exchange Act Rule 21-F-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 (same).

⁷ Exchange Act Rel. No. 85412 at 8-9.

information Claimant 1 provided to the Commission. As discussed above, Claimant 1's information did not lead to the success of an enforcement action, as required by Rule 21F-4(c).

For these reasons, Claimant 1 does not qualify for a whistleblower award.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant 1 in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary