NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

Case Number: I-08080047

NSF-OIG received an anonymous complaint that two NSF employees[1] were signing each other in and out of the integrated time and attendance system (ITAS). The employees were interviewed and admitted signing each other in or out of ITAS in order to obtain credit for hours that were not actually worked. A report of investigation was submitted to the appropriate NSF official[2] for action. Both employees were issued a Notice of Proposal to Remove them from their employment at NSF. Both employees were later issued Letters of Decision that would remove them from employment with NSF effective June 5, 2009. The two employees resigned their positions in lieu of removal. One of the employees[3] later filed a petition to review her case with the Merit Systems Protection Board, but her petition was denied.

Accordingly, this matter is closed.

1 [redacted]

2 [redacted]

3 [redacted]

NATIONAL SCIENCE FOUNDATION
4201 Wilson Boulevard
ARLINGTON, VIRGINIA 22230

DEC 18 2008

OFFICE OF INSPECTOR GENERAL

Confidential

To: [redacted], Program Support Manager, [redacted]

From: Peggy L. Fischer, Associate Inspector General for Investigations

Subject: Investigative Report (Case # I08080047)

Please note: This report contains confidential personal information and it should be disclosed only to individuals who must have knowledge of its contents to facilitate NSF's assessment and resolution of this matter. Unauthorized disclosure may result in personal criminal liability under the Privacy Act, 5 U.S.C. § 552a(i)(1).

The attached Investigative Report concerns two [redacted] Program Assistants (the employees) who admitted to signing each other in and out of the Integrated Time and Attendance System (ITAS).

Based on the facts set out in the Investigative Report, we have concluded that the employees knowingly violated NSF policies with regard to time and attendance. We recommend that NSF take appropriate personnel action with regard to the subjects. Please advise OIG by January 30, 2009 of the action(s) taken regarding this recommendation.

Attachment

cc: Christine C. Boesz, Inspector General
[redacted]
Kathie L. Olsen, Deputy Director, NSF
[redacted]

CONFIDENTIAL

National Science Foundation
Office of Inspector General

Confidential
Report of Investigation
Case Number I-08080047

18 December 2008

This Confidential Report of Investigation is the property of the NSF OIG and may be disclosed outside NSF only by OIG under the Freedom of Information and Privacy Acts, 5 U.S.C. §§ 552, 552a.

Please note: This report contains confidential personal information and it should be disclosed only to individuals who must have knowledge of its contents to facilitate NSF's assessment and resolution of this matter. Unauthorized disclosure may result in personal criminal liability under the Privacy Act, 5 U.S.C. § 552a(i)(1).

I. Summary

OIG received an anonymous submission over the web hotline[1] alleging abuse of the Integrated Time and Attendance System (ITAS) by two Program Assistants (Subjects 1[2] and 2[3]) from the same Division[4] at NSF. The submission alleged that the Subjects regularly signed each other in and out of ITAS.

OIG investigated the allegation that the Subjects were misusing ITAS for personal gain. Specifically, the allegation alleged the Subjects signed each other in and out of ITAS to receive credit for hours spent outside of work. OIG reviewed the Subjects' Official Personnel Files (OPF's), ITAS records, telephone records, ID badge use records, and Outlook folders. OIG also conducted interviews of the Subjects, their supervisor,[5] their division's timekeeper[6] and backup timekeeper,[7] and a Program Director[8] from their division.

OIG concludes that:

- The Subjects failed to meet the standards of conduct expected of NSF and executive branch employees;
- The Subjects were credited for hours they did not work, therefore receiving payment and leave hours beyond what was earned; and
- The Subjects lacked candor during the course of an official OIG investigation.

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1 [redacted]
2 [redacted]
3 [redacted]
4 [redacted]
5 [redacted]
6 [redacted]
7 [redacted]
8 [redacted]

CORRESPONDENCE APPROVAL SHEET (OFFICIAL FILE COPY)

This report will summarize our investigative findings with respect to these conclusions.

II. OIG Investigation

A. *Investigative Activity into Subjects' Alleged Abuse of ITAS*

Subjects 1 and 2 both serve as Program Assistants, involved in processing award proposals within their NSF Division. Subject 1 worked within the Division since November 23, 2007 and Subject 2 joined the Division in June 25, 2007. They did not know each other prior to joining their Division. At all relevant times, Subject 1's tour of duty was 7 am – 3:30 pm, and Subject 2's tour of duty was 8:00-4:30, though their supervisor allotted them flexibility, pursuant to NSF's Flexitime program,[9] regarding when their 8-hour tour of duty would begin on a daily basis. Between January and May 2008, the subjects generally worked their respective tours of duty, only signing in or out of ITAS within 10 minutes of each other on very rare occasions.[10] In April 2008, their supervisor provided both employees with performance evaluations of minimally satisfactory due to work deficiencies, and as described below, shortly thereafter, their ITAS practices dramatically changed.

<u>Document Review Revealed ITAS Abuse</u>

Beginning May 13, 2008, the records establish that Subject 1 and Subject 2 began signing each other in and out of ITAS, as alleged by the anonymous hotline complaint. Specifically, the ITAS records establish that between May 13, 2008 and September 5, 2008, of the 56 days both Subjects worked, they were signed into ITAS within ten minutes of each other on 45 occasions,[11] and signed out within ten minutes of each other on 21 occasions. As demonstrated above, this was a significant change from previous months, when they rarely signed in or out within 10 minutes of each other.

Further, by comparing the ITAS records with both Subjects' badge records, email records and phone records, OIG determined that Subject 1 consistently arrived at NSF over an hour prior to Subject 2 and signed both in upon her arrival. There were instances of Subject 2 arriving over four hours after Subject 1 had signed her into ITAS.[12] In addition, on several occasions, Subject 2 signed Subject 1 in or out of ITAS. An analysis of these records estimate that Subject 1 received NSF credit and pay for over 34 hours that she was not actually on duty, and Subject 2 received NSF credit and pay for over 63 hours that she was not actually on duty.

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[9] NSF Manual 14, Personnel Manual, Chapter VIII-Attendance and Leave, Subchapter 100 NSF Flexitime Program

[10] Specifically, of the 70 workdays between January 1 and May 13, 2008, Subjects signed into ITAS within 10 minutes of each other on only 4 occasions, and signed out of ITAS within 10 minutes of each other on only 7 occasions.

[11] Beginning May 13th, Subject 2 on average did not use her phone, email or ID badge until 1 hour and 9 minutes after she had been signed into ITAS. Prior to May 13th, Subject 2 on average used her phone, email or ID badge within 7 minutes after she had been signed into ITAS.

[12] OIG also noted several instances on the phone records of Subject 2 using her cell phone to call Subject 1's office direct phone number shortly before, or for several hours after Subject 2 was signed into ITAS. A full analysis of these records is provided at Tab 2.

On September 5, 2008, the Subjects were warned by their supervisor to cease their abuse of ITAS. However, the Subjects continued to sign each other in and out of ITAS up until the day they were interviewed by OIG.[13] The following chart summarizes the number of hours lost and monetary cost to NSF resulting from the subjects' misuse of the ITAS system:

	Subject 1	Subject 2
Suibject's Grade	GS-303 6/1	GS-303-7/1
Annual Salary	$35,392	$39,330
Hourly Salary	$16.96	$18.85
Hours taken from NSF	34	63
Monetary Loss to NSF	$ 576.64	$ 1,187.55

On October 7, 2008, after OIG had received the anonymous hotline complaint, the Subjects' supervisor called OIG directly to report the Subjects' ITAS abuse to OIG. The supervisor stated that she had been monitoring the Subjects for approximately two months and found that Subject 1 had been signing Subject 2 into ITAS on a regular basis, and that Subject 2 typically did not arrive at work until an hour or two after Subject 1 had signed her into ITAS.[14]

Interviews Confirmed ITAS Abuse

On October 23, 2008, to follow-up her phone call, OIG interviewed the Subjects' supervisor[15] during which she provided the documents to support her concerns. She also confirmed that she had confronted both individuals about their abuse of ITAS in a private meeting on September 5, 2008, and though she initially believed the Subjects had ceased their behavior after the meeting, she recently learned that all that had been done was that they altered the pattern so that Subject 1 would wait 30-45 minutes each morning before she signed in Subject 2, thereby concealing the continued ITAS abuse. In addition, she informed us of a recent situation on Friday, October 17th, during which a Division Program Director[16] had complained that she could not locate Subject 2, though Subject 2 confirmed she would be at work that day, and had been signed into ITAS on that date. The Subjects' supervisor was not aware of, nor had she attempted to monitor, any ITAS abuse by either Subject with respect to sign-outs at the end of the day, but also noted that she had not focused on such activity.

On October 27, 2008, OIG interviewed the Subjects' timekeeper.[17] The timekeeper stated that Subject 1 generally arrives at work at 7:00 a.m., while Subject 2 generally arrives between 9:30 and 10:00 a.m., well after Subject 1 had signed her into ITAS. The timekeeper stated that the ITAS abuse was blatant and happened very frequently.

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[13] October 30, 2008

[14] The supervisor monitored Subject 2's attendance by turning the Subject's chair each night in such a way that the supervisor would know whether the Subject had arrived at work by the position of the chair. The supervisor would check the ITAS system each morning when she arrived to see if Subject 2 had been signed into ITAS after noting whether the chair had moved since she positioned it the night before.

[15] Tab 3, MOI - Supervisor Interview October 23, 2008.

[16] [redacted]

[17] Tab 4, MOI Timekeeper Interview October 27, 2008

On October 30, 2008, OIG interviewed Subject 1.[18] Upon being presented with the documentary evidence, Subject 1 admitted that she had signed Subject 2 into ITAS, and stated that she was not the one benefiting from the misuse of ITAS. She said that she signed Subject 2 into ITAS because Subject 2 asked her to, but she did not offer any other explanation for her action, and denied knowing when Subject 2 would actually arrive at the office each morning. Subject 1 denied that Subject 2 ever signed her in or out of ITAS.

Subject 1 stated that she did not know what harm it would cause to sign Subject 2 into ITAS and that she just assumed that Subject 2 was putting in her full 8 hours of work each day. Subject 1 stated that it never dawned on her that Subject 2 was not doing her 8 hours, and never thought about the credit hours that might be earned by Subject 2 working 8 hours after being signed into ITAS in the morning before she got into work. When asked why she would have to sign Subject 2 into ITAS in the morning, when Subject 2 could have just signed in upon arrival, and signed out 8 hours later, Subject 1 could not answer the question, and stated, "I've asked myself that very thing. I don't know."

When asked why this ITAS abuse continued after the September 5th conversation with her supervisor, she responded she could not remember if she had signed Subject 2 in after the September 5th meeting and could neither confirm nor deny it. Subject 1 also denied that she automatically signed Subject 2 into ITAS every morning, claiming that she would only do so upon a phone request from Subject 2 to her work number. Even when told that the phone records established that she only received calls from Subject 2's cell phone on fewer than 15 occasions, she continued to deny that this was an automatic process.

When asked whether she had any remorse about signing Subject 2 into ITAS after the conversation with her supervisor, Subject 1 stated that she did have remorse, and claimed that she had a follow-up conversation with her supervisor after their September 5th meeting, and several conversations with Subject 2 in which she warned Subject 2 that there could be repercussions for their ITAS misuse. As a note, both Subject 1's supervisor and Subject 2 deny that these conversations ever took place. Moreover, though Subject 1 admitted that she had supplied her ITAS password to Subject 2, she denied that Subject 2 ever signed her in or out of ITAS, and denied benefitting from this scheme in any fashion.

On the same date, OIG interviewed Subject 2[19], who admitted the ITAS abuse and provided additional details. She informed us that she had previously worked at the National Institutes of Health, which did not have a sign in/sign out system, allowing for more flexibility. While at NIH, she would just call her supervisor and tell her when she would arrive at work.

Subject 2 stated that she would call Subject 1 if she was running late, and that it was not automatic that Subject 1 would sign her in each morning. She had godchildren to drop off at school every morning, and then she would hit traffic getting into work at NSF. She did not recall how or when she had Subject 1 start signing her into ITAS. She stated that she never intended harm or to jeopardize her situation. She noted that her leave was running out quickly every time she had to sign in a few minutes late, or sign out a few minutes early.

[18] Tab 5, MOI Subject 1 Interview October 30, 2008
[19] Tab 6, MOI – Subject 2 Interview October 30, 2008

When asked how she contacted Subject 1 each morning, Subject 2 responded that 9 out of 10 times she would call Subject 1 at the office to tell her that she was running late. When told that the phone records did not support her claims, Subject 2 again denied that Subject 1 automatically signed her into ITAS each morning.

Subject 2 stated that she would arrive between 45 minutes and an hour after Subject 1 signed her into ITAS, and asserted that Subject 1 never signed her out of ITAS. When asked whether she ever signed Subject 1 out of ITAS, she responded, "If I did, it was not consistently. I do not recall if I signed her in or out." When reminded that the records made it appear that she had signed Subject 1 out of ITAS on some occasions, Subject 2 responded that she did sign Subject 1 out a couple of times if she had to leave early to pick up her son.

Subject 2 admitted to two specific instances of ITAS abuse. First, she admitted that on Friday, October 17, 2008, though claiming that she arrived into the office that morning and signed herself in, she admits that she left the office for approximately 2 hours to have her car fixed, and upon returning to the office, did not enter any leave into the system for her absence during her tour of duty. Moreover, she admitted attending a dress event at the local Filene's basement on August 1, 2008, during which she was signed into ITAS all morning by Subject 1, but did not take any leave for her absence that date.[20]

When asked to explain why she continued to misuse ITAS after her supervisor had confronted her in September, Subject 2 stated that she did not have a reason, that to provide a reason would be to make an excuse, and that she has no excuses. She stated that she had not spoken about her ITAS use with her supervisor other than their September 5th meeting, because there was no need. Subject 2 said that she never spoke about the ITAS misuse with Subject 1, nor did she know of any follow up meeting that Subject 1 had with their supervisor.

When asked whether she knew this was wrong, Subject 2 responded, "of course," and stated when asked that she felt remorse for her actions and that she never intended any harm. She admitted that she knew that her actions were not right, and stated, "I can own up to my own faults."

Both Subjects admitted having given each other their ITAS passwords. In addition, both Subjects stated in their interviews that the misuse of ITAS is widespread throughout NSF, with Subject 2 estimating that 8 out of 10 employees do the same thing. However, neither Subject would provide the names of other employees they knew were engaged in this activity.

Based upon the information provided, OIG determined that in addition to abusing ITAS by signing each other in and out, both Subjects lacked candor during an official investigation by providing the following false or misleading information to OIG investigators: As shown below,

[20] Subject 2 indicated to us that she thought that might have been a day that she took some leave after the fact, but the ITAS records reflect that she did not take any leave that date. Moreover, there were several phone calls from her cell phone to Subject 1's work number that morning, prior to her arrival into the office, indicating a knowing intent to commit ITAS abuse on that date.

Subject 1's lack of candor was more significant in that she failed to accept any responsibility for her actions, and failed to admit any benefit to herself.

- Subject 1 denied having Subject 2 ever sign her in or out of ITAS, while the records and Subject 2's testimony prove this to be false.

- Subject 1 stated that she had a private meeting with her supervisor following the September 5th meeting, while the supervisor stated that the September 5th meeting was the only time she spoke with either Subject regarding ITAS use.

- Subject 1 claimed that she confronted Subject 2 about showing up to work late, but Subject 2 stated that they never had any conversations about it.

- Both subjects claimed that their scheme was not automatic, claiming that Subject 2 would call Subject 1 each day she was signed in prior to arrival. The phone records show only 10 instances when this could be true.

B. *Review of Applicable Rules and Regulations*

As described above, the Subjects provided each other with their confidential ITAS passwords and misused that information to sign each other in and out of ITAS when the other was not actually on duty at NSF. By their actions, both Subjects lacked integrity and violated policies and rules applicable to them as employees of NSF and of the executive branch of the federal government.

Specifically, pursuant to 5 C.F.R. § 2635.101, "public service is a public trust," requiring executive branch employees to "respect and adhere to the principles of ethical conduct,"[21] and to "put forth honest effort in the performance of their duties."[22] In addition, "employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards."[23]

NSF Manual 15, Conflicts of Interest and Standards of Ethical Conduct, adopts the principles set forth above.[24] Further, Section 56 of NSF Manual 15 requires that employees use their official time "only in an honest effort to perform official duties."

NSF Manual 14, NSF's Personnel Manual, sets for the expectations of it Flexitime program that allows employees to have discretion to change their work hours on a daily basis, to allow them flexibility. To ensure accountability, NSF uses the ITAS system to "provide affirmative evidence that each employee subject to the flexitime has properly accounted for their work hours."[25]

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[21] 5 C.F.R. § 2635.101 (a)
[22] 5 C.F.R. § 2635.101 (b)(5)
[23] 5 C.F.R. § 2635.101(b)(14)
[24] NSF Manual 15, Section 3
[25] NSF Manual 14, Chapter VIII, Subchapter 100, Section 146

Moreover, NSF's security awareness training mandated for every NSF employee on an annual basis, prohibits employees from sharing their confidential passwords with others, and NSF Bulletin No. 04-10, NSF Password Policy, does the same, specifically stating: "Do not share NSF passwords with anyone, including administrative assistants or secretaries. If you must reveal a password to enable emergency access, be sure to change that password at your earliest opportunity."

Clearly, both Subjects failed to adhere to these applicable policies, by sharing their confidential passwords with each other for the purpose of making false entries into ITAS for each other, thereby receiving both credit and pay by NSF for hours they did not work. They did so knowing that this was wrong, and they continued to do so even after their Supervisor directed them to discontinue this abuse. Moreover, by lacking candor during the OIG investigation, the Subjects also violated NSF policy requiring employees to cooperate with an OIG investigation, by providing truthful responses to OIG investigators.[26]

III. OIG Conclusions and Recommendations

Based on the facts presented above, OIG concludes that Subject 1 and Subject 2 engaged in a dishonest scheme of knowingly entering false information into the ITAS system for each other, in order to receive both pay and credit for hours that they did not work at NSF. They continued to do so even after being warned by their direct supervisor that this misuse of the ITAS system must cease. Their misconduct resulted in a minimum of 97 hours of work hours falsely charged to NSF, and a resulting monetary loss to NSF of $1,764.19. In addition, OIG concludes that both Subject 1 and Subject 2 lacked candor during the OIG investigation by either denying or misrepresenting the extent of their misconduct.

For these reasons, OIG recommends that NSF take appropriate administrative action with regard to Subjects 1 and 2.

[26] NSF Manual 14, (Ch. I ¶ 143)("NSF employees must also fully and promptly comply with all requests for documents, interviews, briefings, and other information from OIG.") and NSF Staff Memorandum O/D 91-18 (Requests from the IG's staff for records, documents or interviews should receive priority attention. The OIG is entitled both by law and by Foundation policy to all records, documents, papers, and other materials that relate to NSF programs and operations. ... The interests of the Foundation and its staff will be best served by completely open and forthright cooperation with our Inspector General.)

List of Tabs

Tab 1	Hotline Web Submission, dated Thursday, August 7, 2008
Tab 2	MOI – Review of Records 10-3-08
Tab 3	MOI – Supervisor Interview, October 23, 2008.
Tab 4	MOI – Timekeeper Interview, October 27, 2008
Tab 5	MOI – Subject 1 Interview October 30, 2008
Tab 6	MOI – Subject 2 Interview October 30, 2008

MEMORANDUM

DATE: June 4, 2009

To : [redacted] Acting Division Director, [redacted]

From : [redacted] Program Assistant, [redacted]

Subject: Resignation

This is to inform you of my resignation from [redacted] as of Friday, June 5, 2009. Although this is a sudden decision, I feel this is within the best interest of my Federal career as well as my health and well being. I have gained an abundance of knowledge (whether good or bad) while working here at NSF. Please note, [redacted] has four pending panels that will need to be completed upon my departure.

Sincerely,

[redacted]

National Science Foundation
4201 Wilson Boulevard
Arlington, Virginia 22230

Date: May 27, 2009

To: [redacted] Program Assistant

Division of [redacted]

From: [redacted], Deputy Division Director

[redacted]

Subject: Letter of Decision

By letter dated April 14, 2009, you were notified of a proposal to remove you from the National Science Foundation. I was designated as the deciding official on that proposal.

You were advised of your rights to representation and to reply to me orally and/or in writing within 14 calendar days of your receipt of the proposal. An initial meeting was scheduled for April 27, 2009. However, [redacted], Steward AFGE Local 3404 was unable to attend this meeting, and it was rescheduled for May 5, 2009. At the May 5 meeting, you provided a written response. Also, during that meeting, you provided an oral statement. In both your written and oral response, you allege (1) the practice of fraudulent use of the ITAS system is widespread in the division and you should not be singled out for punishment, (2) your supervisor, [redacted], failed to inform you that you were doing anything wrong and, in fact, never met you regarding the subject, (3) that there is an "inside clique" of people who receive special treatment, including access to training, and you were being punished as an outsider of this clique and (4) that the first you were notified of any misconduct was at a meeting with personnel from the Office of the Inspector General on October 30, 2008.

I have given full consideration to your written and oral reply that you presented while accompanied by your representative [redacted]. I have also considered the information regarding the charges contained in the Notice of Proposed Removal.

The proposal to remove you from the National Science Foundation was based on the charge of Unacceptable Conduct. The charge is supported by 24 specifications of dates that indicated that you signed [redacted] into the Integrated Time and Attendance System (ITAS) using her password when she was not at work.

Based on your questions posed in your May 5, 2009 written response, I conducted an investigation and as a result, I am removing specification #20. The remaining 23 specifications are clearly supported by the evidence in the case file. The charge of unacceptable conduct is sustained.

In making my determination, I have considered your claim that the practice of fraudulent use of ITAS is widespread in the division and that you should not be singled out. I find no substance to the allegation that misuse of the ITAS system across the division is widespread. You state that "Others and I have seen [redacted] on many occasions leave her desk before the end of her tour of duty dressed in workout clothing to go to the gym, then return to sign out." You also state, "[redacted] went straight to the OIG purely out of spite." However, notification to the OIG of this matter was done anonymously, and you provided no factual evidence that it was [redacted] who initiated the investigation. I provided you with an opportunity to provide me with additional specifics on the allegation that ITAS abuse is widespread in the Division, but you were unable to do so. In consideration of the vagueness of this allegation, I do not find this allegation credible. Further, I do not believe that the truth or falseness of this allegation should affect the outcome of this case.

I have also considered your May 12, 2009 response that [redacted] failed to inform you at the meeting that she held with you on September 5, 2008 that you were doing anything wrong or that you ever met regarding fraudulent use of ITAS. Evidence indicates that [redacted] met with you to discuss irregularities regarding the ITAS sign in times and the actual arrival times of you and [redacted] The Memorandum of Investigation notes from the OIG clearly discuss that a meeting took place. Moreover, I have concluded that, at the meeting, [redacted] informed you that your conduct was inappropriate and that you should refrain from engaging in it any more. Regardless of whether [redacted] did, in fact, convey this message to you, however, you knew or should have known that fraudulent use of ITAS was not permitted. Thus, I am not persuaded by your claim.

In addition, I have considered your claim that there is an inside clique of people who receive special treatment, access to training and that you're being punished as an outsider. As regards the allegation that there is an "inside clique" of people who are treated differently, I have reviewed your performance appraisals. You joined [redacted] in 2007 and received two performance appraisals from [redacted], both were Minimally Successful. These appraisals note that your performance is sporadic and lacks initiative and focus, and your work product was inadequate. I find that you have been treated no differently than any employee performing at your level of performance. Further, I do not find that you have been denied access to training.

Lastly, I have considered your claim that the first you were notified of any misconduct was at a meeting with personnel from the Office of Inspector General on October 30, 2008. As previously indicated, I disagree. I have determined that [redacted] informed you that your conduct was inappropriate when she met with you on September 5, 2008. Regardless of the nature of this meeting, however, you knew or should have known that fraudulent use of ITAS was not permitted. Therefore, I do not find this claim credible.

Penalty Consideration

In making my decision, I have considered the following:

1. *The nature and seriousness of the offense, and its relation to the employee's duties,*

position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated. I find this factor relevant to this case. Falsification of time and attendance records is in clear violation of the General Standards of Ethical Conduct as provided in Executive Order 12674, which you requested a copy of and I provided to you. Evidence indicates that you engaged in falsification of time and attendance records several times between May 23, 2008, and September 30, 2008. Your actions were intentional and repeated. This behavior continued after meeting with your supervisor on September 5. As a government employee, you are expected to be trustworthy and of good character. You are also expected to put forth honest effort in the performance of your duties.

2. *The employee's past disciplinary record.* I find this factor relevant. You have no record of previous disciplinary actions, but I do not find that sufficient to offset the seriousness of the misconduct to which you are charged.

3. *The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.* I find this factor relevant. Your performance was marginal during the period of the offense, and your performance was provided to you in writing and discussed with you by your supervisor. You came to [redacted] from [redacted] in 2007. You note in your response to me, that you received a Fully Successful performance appraisal and two "Commendable" awards in May and July 2007, with a monetary award of $400. Your period of service to NSF is relatively short and not at a level of performance that would mitigate your actions.

4. *The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties.* I find this factor relevant. Your misconduct has negatively affected your supervisor's confidence in your ability to perform your assigned duties. Likewise, I do not have either confidence or trust that you will perform your assigned duties, follow NSF policies, rules or regulations.

5. *Consistency of the penalty with those imposed upon other employees for the same or similar offenses.* I find this factor relevant. There is no comparable case at NSF nor have I been involved either as proposing or deciding official regarding like or similar cases. However, the Merit Systems Protection Board has routinely held that removal is a reasonable penalty for falsification.

6. *The notoriety of the offense or its impact upon the reputation of the agency.* I find this factor relevant. This particular offense did not rise to the level of significant visibility; however, because of its stature in the scientific community, NSF must maintain the highest possible standards of conduct. It is also important that, as NSF demands the highest standards of the institutions that it funds, and uses the Office of the Inspector General to conduct oversight on NSF grantees, NSF must also maintain equally high standards among its employees. Misconduct if not addressed, could lead others to believe that it is not a major offense, and widespread abuse could lead to significant notoriety.

7. *The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.* I find this factor relevant. NSF policy on use of the ITAS system is clear. Each day that you signed into ITAS and those where you signed [redacted] into ITAS using her password, you were required to enter a password and accept the system sign in time as the arrival time at work as being correct. You knew or should have known that your conduct was contrary to government and NSF policies, rules and regulations. Your conduct is unacceptable in any business environment. Further, you were informed by your Supervisor on September 5, 2008 that falsification of time is not acceptable and could lead to disciplinary action even though at that time, she was unaware of the extent of your misconduct. It is also clear that the September 5 meeting with [redacted] had an impact on you. After that date, the pattern of ITAS abuse was altered but did not cease. After September 5, you would wait 30-45 minutes after you signed in before signing [redacted] in to conceal the continued ITAS abuse.

8. *Potential for the employee's rehabilitation.* I find this factor relevant. On the one hand, I was encouraged by your admission of guilt, fully acknowledging that you committed the alleged falsification of time and attendance. On the other hand, I am discouraged by your continued proclivity to be dishonest about the facts surrounding this case. In your response memo dated May 5, 2009, you state, "There was never a meeting held or letter of record from my supervisor stating what I was being charged with and to discuss possible reprimand or probation when it was brought to my attention it was done with a very vague email from OIG requesting a meeting on Wednesday October 29, 2008." You are correct that no meeting took place to discuss charges or possible disciplinary action. Contrary to your assertion, however, [redacted] met with you to discuss what she believed to be your involvement in time falsification. The evidence provided by the Office of the Inspector General, indicate that you were clearly warned and that you subsequently altered your behavior, but did not stop your ITAS abuse. Your denial that any meeting with [redacted] regarding your misconduct took place is simply not true, and seriously erodes my confidence in your ability to be rehabilitated.

9. *The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.* I find this factor relevant. Given the severity of your misconduct, I believe that removal is warranted to promote the efficiency of the federal government.

Overall, I find 9 of the 12 Douglas Factors relevant to this case. Therefore, my decision based upon the analysis of the Douglas Factors, the evidence provided by the Office of the Inspector General, the NSF Division of Human Resource Management, and the information provided orally and in writing is to uphold the proposed removal. Accordingly, it is my decision to remove you from your position and from employment with the National Science Foundation effective June 5, 2009.

If you wish, you have the right to appeal this action, in writing, to the Merit Systems Protection Board (MSPB), Washington Regional Office, 1800 Diagonal Road, Alexandria, Virginia 22314. For your convenience, a copy of the MSPB appeal form and procedures are enclosed. If you

elect to appeal, you must file your appeal with the MSPB no later than 30 days after the effective date of your removal. You may be represented by a representative of your choice in filing an appeal.

Also in accordance with Article XVI of the Collective Bargaining Agreement, you may present a grievance at any time after receipt of this decision, but not later than twenty-five (25) calendar days after receipt. Your grievance must begin as an informal grievance and may be presented either orally or in writing. You may elect only one (1) forum to challenge this decision.

If you believe this action was motivated in whole or in part by discrimination because of your race, color, religion, sex, age, national origin, physical or mental disability, or your allegation(s) of reprisal for prior EEO activity, you have the following options available to you: (1) You may appeal this action and your allegation(s) of discrimination and/or reprisal to the Merit Systems Protection Board, or (2) pursuant to 29 CFR Part 1614, you may file a complaint about this action with the National Science Foundation Office of Equal Opportunity Programs. If you decide to file a discrimination complaint about this action, you must bring your allegation(s) of discrimination to the attention of an EEO counselor within forty-five (45) calendar days of the effective date of your removal.

Exercising your right to file an appeal will not postpone the June 5, 2009 effective date of your removal.

[redacted]

[redacted] acknowledge receipt of this document.

[redacted]

Signature

5/27/09

Date

National Science Foundation
4201 Wilson Boulevard
Arlington, Virginia 22230

Date: April 14, 2009

To: [redacted], Program Assistant
[redacted]

From: [redacted] Program Support Manager
[redacted]

Subject: Notice of Proposal to Remove

This is notice that I propose to remove you from your position of Program Assistant no sooner than thirty (30) days from the date of your receipt of this notice. This action is taken for your unacceptable conduct.

As background, an inquiry was initiated into your use of the Integrated Time and Attendance System (ITAS) by the Office of Inspector General (OIG), following receipt of an anonymous web hotline submission alleging that you and another employee, [redacted] regularly signed each other into and out of ITAS. The results of that inquiry are outlined in Investigative Report Number I08080047, which is incorporated into this notice of proposal by reference.

Charge #1 – Unacceptable Conduct

On October 30, 2008, you were interviewed by Attorney Advisor [redacted] and Auditor [redacted] of OIG. Prior to the interview, you were provided with a copy of your Weingarten rights and a Garrity warning.

During your interview with OIG, you acknowledged that on multiple occasions, you had signed [redacted] into ITAS in the morning, prior to her arrival at work, because she had asked you to do so. You also acknowledged that you had told [redacted] that this was not right, and told her that it was "inconsistent," in that you were signing [redacted] in earlier than [redacted] arrived at work, so that the ITAS entries were not correct or consistent with when [redacted] actually arrived at work. You also stated during the interview that you did not know how late [redacted] arrived at the office after you signed her into ITAS in the morning. You also acknowledged that you and [redacted] had given your ITAS passwords to each other. Your repeated violation of timekeeping procedures has also been observed by your timekeeper, [redacted] according to an interview conducted with her by OIG on October 27, 2008.

During your interview with OIG, you were asked whether you had any remorse about signing in and out of the system, and you responded that you did have remorse. You also stated that while previously, you did not think that it was doing any harm to NSF to sign [redacted] into ITAS, you now saw how it hurts. You also stated that you had spoken to [redacted] many times, stating that there could be "bad repercussions," and that "we both could be terminated."

You stated repeatedly during the interview with OIG that you did not think there was any harm in what you had been doing because you assumed [redacted] was working her 8 hours. However, when you were asked why you would have to sign [redacted] into ITAS in the

morning if she was doing her 8 hours anyway and could have just signed in upon her arrival, you could not answer the question and stated, "I've asked myself that very thing. I don't know."

Toward the end of the interview, you stated that you and [redacted] both knew that you may end up begin terminated because what you did was wrong.

The specifications below, which derive from the above-referenced IG report, as well as from a close review of your and [redacted] ITAS records, proximity badge records, Outlook e-mail records, NSF telephone records and login records for your NSF desktop computer, support the charge of unacceptable conduct and represent occasions when you signed [redacted] into ITAS. It is clear from the review of records that in many instances, your sign-in time into ITAS is within 10 minutes of [redacted] but the review of all other records indicates that [redacted] was not at work for sometimes up to several hours after you signed her in.

Specification #1.
On Friday, May 23, 2008, ITAS records indicate that you were signed into ITAS at 7:50 am and [redacted] was signed in at 7:51 am. However, evidence indicates that she did not report for duty until 9:49 am. She was compensated for 1 hour 58 minutes that she did not work.

Specification #2.
On Thursday, May 29, 2008, ITAS records indicate that you were signed into ITAS at 7:14 am, and you received a phone call on your NSF telephone at 8:09 am, following which [redacted] was signed into ITAS at 8:10 am. However, evidence indicates that she did not report for duty until 8:45 am. She was compensated for 35 minutes that she did not work.

Specification #3.
On Thursday, June 5, 2008, ITAS records indicate that you were signed into ITAS at 7:14 am and [redacted] was signed in at 7:15 am. You placed three calls from you NSF telephone to [redacted] cell phone at 7:12 am, 7:28 am and 7:32 am. A phone call then came into your NSF telephone at 7:50 am from a cell phone located in [redacted] where [redacted] cell phone is registered, following which she was signed out of ITAS at 8:00 am. Records indicate that [redacted] did not report for duty, although her ITAS records indicate that she was present from 7:15-8:00 am. She did not use her badge, computer or NSF telephone on that day. She was compensated for 45 minutes that she did not work.

Specification #4.
On Friday, June 6, 2008, ITAS records indicate that you were signed into ITAS at 7:02 am and [redacted] was also signed in at 7:02 am. However, evidence indicates that she did not report for duty until 7:40 am. She was compensated for 38 minutes that she did not work.

Specification #5.
On Friday, June 13, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was also signed in at 7:00 am. However, evidence indicates that she did not report for duty until 8:13 am. She was compensated for 1 hour 13 minutes that she did not work.

Specification #6.
On Monday, June 23, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was also signed in at 7:00 am. However, evidence indicates that she did not report for duty until 7:55 am. She was compensated for 55 minutes that she did not work.

Specification #7.

On Thursday, June 26, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was also signed in at 7:00 am. However, evidence indicates that she did not report for duty until 8:43 am. She was compensated for 1 hour 43 minutes that she did not work.

Specification #8.
On Wednesday, July 2, 2008, ITAS records indicate that you were signed into ITAS at 7:17 am and [redacted] was also signed in at 7:17 am. However, evidence indicates that she did not report for duty until 10:28 am. Between 7:17 am and 10:28 am, four calls were placed from [redacted] cell phone to your NSF telephone at 8:56 am, 9:15 am, 9:51 am and 10:26 am. She was compensated for 3 hours and 1 minute that she did not work.

Specification #9.
On Thursday, July 3, 2008, ITAS records indicate that you were signed into ITAS at 7:10 am and [redacted] was signed in at 7:11 am. However, evidence indicates that she did not report for duty until 9:26 am. She was compensated for 2 hours 15 minutes that she did not work.

Specification #10.
On Thursday, July 10, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was also signed in at 7:00 am. However, evidence indicates that she did not report for duty until 9:55 am. She was compensated for 2 hours 55 minutes that she did not work.

Specification #11.
On Friday, July 11, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was also signed in at 7:00 am. However, evidence indicates that she did not report for duty until 8:38 am. She was compensated for 1 hour 38 minutes that she did not work.

Specification #12.
On Monday, July 14, 2008, ITAS records indicate that you were signed into ITAS at 7:11 am and [redacted] was signed in at 7:12 am. However, evidence indicates that she did not report for duty until 10:01 am. You received a call on your NSF telephone from [redacted] cell phone at 8:10 am. [redacted] was compensated for 2 hours 49 minutes that she did not work.

Specification #13.
On Thursday, July 17, 2008, ITAS records indicate that you were signed into ITAS at 7:09 am and [redacted] was signed in at 7:10 am. However, evidence indicates that she did not report for duty until 8:49 am. She was compensated for 1 hour 39 minutes that she did not work.

Specification #14.
On Thursday, July 24, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was signed in at 7:04 am. However, evidence indicates that she did not report for duty until 8:49 am. She was compensated for 1 hour 45 minutes that she did not work.

Specification #15.
On Friday, August 1, 2008, ITAS records indicate that you were signed into ITAS at 7:01 am and [redacted] was signed in at 7:09 am. However, evidence indicates that she did not report for duty until 11:27 am. You placed a call from your NSF telephone to [redacted] cell phone at 7:02 am. [redacted] then placed multiple calls from her cell phone to your NSF telephone at 7:08 am, 7:24 am, 9:41 am, 10:27 am, 10:37 am, 10:41 am, 10:47 am, 10:54 am, 10:58 am and 11:07 am. [redacted] was interviewed by the NSF Office of Inspector General on October 30, 2008, regarding her use of the ITAS system. During this interview, she confirmed that she

attended the Filene's Basement Wedding Event on the morning of August 1, 2008. She was compensated for 4 hours 18 minutes that she did not work.

Specification #16.
On Friday, August 8, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was signed in at 7:06 am. However, evidence indicates that she did not report for duty until 8:40 am. She was compensated for 1 hour 34 minutes that she did not work.

Specification #17.
On Monday, August 25, 2008, ITAS records indicate that you were signed into ITAS at 7:11 am and [redacted] was signed in at 7:12 am. However, evidence indicates that she did not report for duty until 8:28 am. She was compensated for 1 hour 16 minutes that she did not work.

Specification #18.
On Thursday, August 28, 2008, ITAS records indicate that you were signed into ITAS at 7:10 am and [redacted] was signed in at 7:11 am. However, evidence indicates that she did not report for duty until 9:30 am. I noted on that day that I first saw [redacted] at 9:40 am. She was compensated for 2 hours 19 minutes that she did not work.

Specification #19.
On Friday, August 29, 2008, ITAS records indicate that you were signed into ITAS at 7:03 am and [redacted] was also signed in at 7:03 am. However, evidence indicates that she did not report for duty until 9:18 am. She was compensated for 2 hours 15 minutes that she did not work.

Specification #20.
On Tuesday, September 2, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was signed in at 7:06 am. However, evidence indicates that she did not report for duty until 9:05 am. I noted on that day that I first saw [redacted] at 9:12 am. She was compensated for 1 hour 59 minutes that she did not work.

Specification #21.
On Wednesday, September 3, 2008, ITAS records indicate that you were signed into ITAS at 7:00 am and [redacted] was signed in at 7:02 am. However, evidence indicates that she did not report for duty until 9:30 am. I noted on that day that I first saw [redacted] at 9:30 am. She was compensated for 2 hours 28 minutes that she did not work.

Specification #22.
On Thursday, September 4, 2008, ITAS records indicate that you were signed into ITAS at 7:06 am and [redacted] was signed in at 7:07 am. However, evidence indicates that she did not report for duty until 9:45 am. I noted on that day that I first saw [redacted] at 9:45 am. She was compensated for 2 hours 38 minutes that she did not work.

Specification #23.
On Tuesday, September 30, 2008, ITAS records indicate that you were signed into ITAS at 7:09 am and [redacted] was signed in at 9:00 am. However, evidence indicates that she did not report for duty until 10:00 am. I noted on that day that I first saw [redacted] at 10:00 am. She was compensated for 1 hour that she did not work.

Specification #24.

On Wednesday, October 1, 2008, ITAS records indicate that you were signed into ITAS at 7:09 am and [redacted] was signed in at 8:00 am. However, evidence indicates that she did not report for duty until 10:40 am. She was compensated for 2 hours 40 minutes that she did not work.

Based on your admissions in the interview conducted by OIG and the above-referenced records, I find that you signed [redacted] into ITAS on these occasions, as a result of which, she was compensated for a total of 46 hours 16 minutes that she did not work. With your assistance, she earned salary, benefits, leave and credit hours to which she was not entitled during this time.

Penalty Consideration

Your misconduct is serious, significant and unacceptable for a Federal employee As a Federal employee, you are bound to abide by the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635), which states that each of us is responsible to ensure that every citizen has complete confidence in the integrity of the Federal government.

In proposing this action, I have considered your ten years of service in the Federal government. However, I have also considered that you have only been employed at the National Science Foundation for two years and 4 months at the National Science Foundation and that you were rated "minimally successful" on your last performance appraisal. Therefore, I do not find that your overall length of service with the Government represents an effective mitigating factor in my consideration of an appropriate proposed penalty.

The fact that these incidents happened repeatedly and over such a significant period of time seriously undermines my ability to believe in your potential for rehabilitation. The fact that you have admitted that you knew your actions were wrong and yet you continued to violate governmental policies displays both a lack of judgment and a disregard for governmental regulations. Your actions have eroded my faith in your trustworthiness. Therefore, based on the evidence available to me, I must propose your removal from Federal employment.

It is extremely important that you recognize that this is a proposed action and not a decision. I am not the agency official who will render a decision on this action. That determination will be made by [redacted], Deputy Division Director for the Division of [redacted], who is the deciding official in this case. Before making any decision, [redacted] must consider any oral and/or written reply and any other documentation that you choose to provide.

Therefore, I encourage you to reply to the charges and specifications orally, in writing, or both; and to furnish affidavits and other documentary evidence that you wish to have considered by [redacted] before he makes a decision.

You will have fourteen (14) calendar days after the date you receive this notice to reply orally and/or in writing and to provide any other documentary evidence to [redacted]. You have the right to be represented by an attorney or other representative of your choosing. You have the right to a reasonable amount of work time to prepare your oral and/or written reply. You have the right to review the material which was relied upon to support the reasons for the proposed action.

Please provide any written reply to the charges to [redacted]. If you wish to reply orally, please contact [redacted] at (703) 292-[redacted] to arrange an appointment.

[redacted] will carefully review this proposal and the material upon which it was based, and will thoroughly consider any oral and/or written reply made by you or your representative before making a decision. [redacted] will also fully consider any other affidavits or documentary evidence that you wish to provide. Because no decision has been made, you are expected to report to work as scheduled during the proposal notice period.

If you believe a personal problem has contributed to or caused your inappropriate behavior, I urge you to make an appointment with an Employee Assistance Program (EAP) Counselor. This is a confidential program, and you may reach a counselor by calling the COPE at (202) 628-5100 to schedule an appointment. Recommending EAP is solely to advise you of the availability of assistance. Ultimately, you are responsible for correcting your conduct.

If you have any questions regarding your rights or the procedures used in this matter, you may contact Ms. [redacted], Senior Employee Relations Specialist, in the Division of Human Resource Management. [redacted] can be reached on extension [redacted]

[redacted]

I acknowledge receipt of this document.

[redacted]
Signature

4/15/09
Date

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

[redacted],
Appellant,

v.

NATIONAL SCIENCE FOUNDATION,
Agency.

DOCKET NUMBER
[redacted]

DATE: [redacted]

[redacted] pro se.

[redacted], Esquire, Arlington, Virginia, for the agency.

BEFORE

Neil A. G. McPhie, Chairman
Mary M. Rose, Vice Chairman

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made no error in law or regulation that affects the outcome. 5 C.F.R. § 1201.115(d).

Therefore, we DENY the petition for review. The initial decision of the administrative judge is final. This is the Board's final decision in this matter. 5 C.F.R. § 1201.113.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the

court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.