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Page: 1A

13 accuse job agency of racism

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Iowa Workforce Development, which is responsible for enforcing workplace laws, denies its hiring practices are discriminatory
A DES MOINES SUNDAY REGISTER INVESTIGATION

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Iowa Workforce Development passed over Beverly Clark, a black woman from Des Moines, at least 56 times in four years for job promotions.

Yolanda Shook, another black woman from Des Moines, twice took a pre-employment test at the department - each time scoring higher than Iowa Workforce Development's director did - but she was told she failed and would not be considered for a promotion.

The agency's affirmative action officer, Harvey Andrews, a black man, was demoted and replaced by a white woman not trained to know whether all aspects of the agency's hiring and promotion practices complied with federal labor laws.

Their stories are not unique. Thirteen people have complained recently about discriminatory hiring and promotion practices at the government agency that is responsible for enforcing workplace laws and helping Iowans find jobs.

Last year, the state agreed to pay Clark and her lawyers about \$247,000 to settle her lawsuit, which accused Iowa Workforce Development of discrimination.

In May, 11 people filed a civil rights complaint on behalf of themselves and all black people who were denied career opportunities by the agency. The complaint accuses the agency of "systemic" discrimination.

A former top official at Iowa Workforce Development calls the allegations of racism "ridiculous." State officials point to the fact that the agency employs a higher percentage of minorities than state government as a whole, and the percentage of minorities on the staff of the agency exceeds the percentage that minorities represent in Iowa's overall work force population.

"Since about 1990, Iowa Workforce Development's employment policies and practices have been examined by outside entities - entities that have concluded that Iowa Workforce Development has not violated state and federal anti-discrimination laws," agency spokeswoman Kerry Koonce said.

Nevertheless, an investigation by the Des Moines Sunday Register found signs of problems in the agency's hiring practices. Interviews with job applicants and government officials and the examination of numerous court documents and other state records found:

- Iowa Workforce Development used a screening test - one statistically proven to have a negative effect on the scores of minorities, particularly blacks - to weed out applicants for jobs at the agency.

- The agency continued using the test for outside applicants, even after discontinuing its use for internal promotions, when

questions were raised about its fairness and possible racial bias. The agency's director took the test after questions were raised about it, and he said it was not an "appropriate or accurate" screening tool. But his staff continued to use the test for about three more years.

- State officials ignored multiple warnings that problems existed in the agency's hiring and promotion practices. Policies sometimes were ignored and recommended changes were not made.

Discrimination complaints tied to top levels of agency

The Sunday Register's examination of Iowa Workforce Development comes at a time when the agency is under considerable public scrutiny for not properly monitoring the use of money funneled to the Central Iowa Employment and Training Consortium, or CIETC, a Des Moines-based jobs training program.

Gov. Tom Vilsack, a Democrat, demanded, and received, the resignation of the top administrator at Iowa Workforce Development, director Richard Running. His deputy, Jane Barto, also agreed to leave.

The Iowa Department of Administrative Services opened a brief investigation last spring into the management lapses at Iowa Workforce Development. The investigation found that employees of the agency were improperly given jobs, pay raises and bonuses.

Not mentioned in the investigative report were several complaints of discrimination tied to top levels of Iowa Workforce Development.

Eleven people filed complaints in May with the Iowa Civil Rights Commission, alleging racism at Iowa Workforce Development.

At the heart of the complaints is a report by Beverly Clark's lawyers, Thomas Newkirk and Michael Carroll. Their brief called on Vilsack to overhaul Iowa Workforce Development to clean out seeds of racism.

"We have identified within Iowa Workforce Development systemic racial discrimination practices focused on African Americans but likely bleeding into other non-white groups, combined with continuous intentional retaliation toward any who seek to challenge or expose the discrimination," the brief said.

It added: "IWD does not refuse to hire all African Americans. IWD takes steps to keep the numbers of black employees hired at or just below the requirements of the state affirmative action plan. In other words, they use that plan as a ceiling, rather than a floor."

Newkirk and Carroll said the Iowa Civil Rights Commission is too underfunded to properly investigate such complaints against an agency.

The lawyers also said Attorney General Tom Miller is defending Iowa Workforce Development against discrimination complaints, rather than helping expose abuses.

While acknowledging no wrongdoing in the Beverly Clark case, the state settled with her, in part because officials feared they could lose the lawsuit and Iowa Workforce Development could come under court-ordered monitoring for violating employees' civil rights.

In June, state officials announced that six Iowa Workforce Development employees would be laid off in a cost-saving move, including Jackie Mallory, who headed the agency's human resources division. Mallory was the target of the report by Newkirk and Carroll.

State officials said the layoffs had nothing to do with the report or the discrimination complaints.

The Sunday Register sought comment several times from Vilsack's office. Spokeswoman Jennifer Mullin declined to speak about specifics, citing concerns about pending litigation. The office issued a written statement:

"While I can't comment on the quality of the employment screening tests used by IWD during certain periods of time, I can say the Vilsack/Pederson administration has been committed to hiring and retaining a diverse workforce in state government. ... Promoting and nurturing diverse populations is important to keeping our communities vibrant, and that is true of our state government community as well."

Applicants question fairness of screening test

To Beverly Clark, Yolanda Shook and Linda Pippen, the customer service test that Iowa Workforce Development used in screening job applicants was unfair.

Clark began working at the department in August 1998 as a secretary. She could not score high enough on the test to get an interview for the job of work force adviser when those positions were open.

Shook scored higher on the test than Richard Running, the agency's director at the time. But Shook said she was told she scored too low to be considered for a work force adviser job.

Pippen, who joined Iowa Workforce Development in 1998 as a work force associate, scored high on the screening test, and her supervisor wanted to promote her, but a white woman who initially scored below the cutoff score was given the job instead.

Work force advisers are the frontline employees at Iowa Workforce Development who are responsible for helping Iowans apply for unemployment benefits. There now are about 250 such advisers in the agency, and they are paid between \$34,000 and \$50,000 annually, said Koonce, the spokeswoman. About 13 percent of the 250 work force advisers are minorities, she said.

The agency has about 750 full-time employees, of which about 14 percent are classified as minorities by the state, according to its most recent report in 2005. The state government's work force as a whole is 5 percent minority, while Iowa's work force is 6 percent minority.

Because of the job's popularity, the department began using a test in 1998 to examine potential applicants' customer service skills.

To get into the pool of applicants eligible to interview for work force adviser jobs, a person had to meet certain minimum job requirements and score 140 of 188 points on the customer service test, testimony and records show. In some cases, the required minimum test score changed, depending on the number of people to be considered, said Mallory, the agency's former human resources official. But records and interviews contradict her.

Beverly Clark had worked in state government since 1996. She had an associate's degree from Scott Community College. In May 1999, Iowa Workforce Development honored her with an award for her customer service skills.

Yet she did poorly on the department's customer service test.

Clark took the test four times - twice in 1998; twice in 1999 - but she failed to score high enough to be considered for an interview. The highest she scored was 138, records indicate. She was told 140 was the minimum score she needed.

"I couldn't believe that I got a score like that," Clark remembered.

It frustrated her. The test seemed simple enough: She watched a video of common office situations and selected from among four responses.

The video covered situations, such as the copy machine breaking down. Do you ask a co-worker for help, go to the boss, scream at it, kick it?

Clark said the answers seemed like common sense and she couldn't understand how she scored so poorly.

Officials in Iowa Workforce Development's human resources office would not allow Clark to see the test answers, so she could not see what she was doing wrong.

When she complained that the test did not seem fair, Mallory told her that it wasn't discriminatory.

The Sunday Register requested access to the test this summer under Iowa's open records law, but a spokeswoman for the department said the test could not be found.

Reports showed blacks scored lower on exam

In January 2000, Clark took her complaints about the test to Iowa Workforce Development Director Richard Running, a former

Democratic legislator from Cedar Rapids.

"I simply would like to know where did I go wrong and what can be done to increase my score," Clark told Running in a March 1, 2000, letter.

"I would like to retake the test, but until I find out the results of the prior tests I don't feel comfortable taking it again."

The department purchased the test in 1997 from Ergometrics and Applied Personnel Research Inc. of Edmonds, Wash. The purchase occurred two years after the company reviewed the test and found that blacks statistically did worse on it than whites.

"The test has demonstrated some significant adverse impact based on ethnicity," the company's report said. Despite that, the report said the test could be used in pre-employment screening because the test was evaluating specific skills critical to the success of the job and the employer.

State officials insist they never saw that report, but another Ergometrics report the state did receive hinted at the likelihood of adverse effects on the scores achieved by minorities taking the test.

Mallory said she believed the screening test was a fair way of narrowing a field of candidates.

She also said that Cynthia Eisenhauer, now Vilsack's chief of staff, authorized the purchase and use of the test when she was director of Iowa Workforce Development. Eisenhauer's aides in the governor's office dispute that statement, and Iowa Workforce Development could not locate documents pertaining to the purchase of the test.

Running, Eisenhauer's replacement at Iowa Workforce Development, said in testimony in February 2005 that he questioned the screening test after Clark complained about it in early 2000. He asked to take the test. Afterward, he said the agency should stop using the exam.

"I was a community college business and industry trainer in one of my previous lives, and I did training in ... quality customer service," Running testified. "I, after taking the test, just didn't think it was the most appropriate or accurate tool of measuring ability for customer service kinds of positions."

State records show Running scored 143 on the exam. To be considered for a work force adviser job, applicants needed at least 140, according to records sent to Clark. The highest Clark scored was 138.

Although Running ordered Iowa Workforce Development to stop using the screening test, records show the agency continued to use it to screen applicants who applied from outside of the department.

Running declined to be interviewed for this article. But his lawyer said Running did not believe the test was discriminatory.

Test use continues, despite complaints

Clark was neither the first person nor the only person to raise questions about the customer service test.

In 1998, Harvey Andrews, Iowa Workforce Development's officer responsible for ensuring the agency complied with federal affirmative action laws, asked Mallory if the test had any negative effect on women, minorities or the disabled, testimony shows.

Mallory never answered, and in 2002 Andrews was demoted in what he was told was a cost-saving step.

His duties were given to a white woman, Ramona Kintz, who said under oath in 2005 that she was not qualified to judge whether the test was discriminatory.

Andrews could not be reached for comment.

Kintz lost her job in the June layoffs. A black man has been named the affirmative action officer.

Top officials of Iowa Workforce Development received a formal complaint about the customer service test in 1999. Karen von Behren, an investigator with Iowa Workforce Development in Burlington, thought the test sounded unfair and filed a complaint

through the union grievance process.

State records show her complaint was initially denied by Shanell Wagler, an official in the department's human resources division, who wrote that the complaint was untimely, not contractual and involved an issue left up to management.

Clark's complaints spurred an investigation by work force development officials.

Dan Adair, at the time an official with the Iowa Department of Personnel, and Russ Coleman, then a work force development division head, looked at the test and recommended the agency stop using it.

"The customer service examination should be eliminated as part of the screening process for all applicants," Adair and Coleman said in a memorandum to officials in 2000. "In our opinion, there are other methods available that would be sufficient indicators of a person's customer service ability such as interviews, reference checks, and applicable education and experience."

The agency stopped using the test for internal promotions. Despite the recommendation from Adair and Coleman, the department continued to use the exam to screen external applicants until 2003, Mallory said.

With Iowa Workforce Development no longer using the screening test internally, Clark thought she would have an easier time getting a promotion at the agency. Running instructed her to see Mallory, the human resources manager, about applying for a new job.

That new job never came.

Application after application, Clark was rejected in what she now believes was retaliation for complaining about the test. Work force development officials told her that was not the case.

Nevertheless, Clark lost promotions to a younger woman with less experience who applied after the application deadline and to a less educated white man who worked in the mailroom, records show.

She sued the state in 2002, claiming she was passed over for 56 jobs in four years. The state settled last year right before the case went before a jury, agreeing to pay her and her lawyers about \$247,000.

In records regarding the court case, a memo from Attorney General Tom Miller's staff explained the rationale for settling the case:

"The agency adamantly denies any intentional use of race as any factor in its decisions, much less a 'motivating' factor as is required by the federal and state statutes," Gordon Allen, then the deputy attorney general, wrote in the April 21, 2005, letter.

"However, our defense was hampered by incomplete memories of witnesses due to the passage of time and the number of decisions being challenged. Given that, there was a substantial and very real risk of a large jury verdict, with subsequent court-ordered equitable relief and court monitoring, under the Iowa Civil Rights Act."

Job goes to white woman with lower exam score

The decisions of some Iowa Workforce Development managers have left the agency open to claims of plots to fire certain employees who are minorities or disabled.

Linda Pippen, the woman who scored high on the customer service test but saw the promotion go to a white woman, is one who felt wronged.

Pippen, a work force associate in the Waterloo office in 1999, scored 155 points on the screening test. Her supervisor told the human resources office in Des Moines that he wanted to promote her to an open work force adviser job.

Pippen "gets along with every person" and has "a very positive attitude toward work," her boss wrote.

Yet the Des Moines office balked, and the job went to a white woman who scored 125 on the test that supposedly required a minimum score of 140 to pass. The woman was invited to retake the test and scored 160.

Pippen complained to the Iowa Civil Rights Commission. State officials who investigated did not find probable cause to believe there was discrimination. The investigation report noted that the white woman had a better resume than Pippen.

The investigator did take issue with how Pippen was treated.

"The management methods used by IWD does nothing to enhance good employee morale," the report in 2000 by Roger Halleck said.

Halleck found it "rather disturbing" that agency officials downgraded the Waterloo job to a lower-paying position as soon as the white woman transferred to another division.

"Who would be the expected candidates for her replacement?" Halleck asked. "The answer is the three African American workforce associates."

Work force development officials said the position was downgraded to save money.

Black woman told of plot to force her to quit

While the Iowa Civil Rights Commission investigation into Linda Pippen's complaint hinted at a perception of a plot to not hire blacks for higher-level jobs, others have complained directly about that.

In 2001, Violet Ann LeFlore, a black woman who was a work force associate in Cedar Rapids, filed a complaint with the civil rights commission after she learned of an attempt by some Iowa Workforce Development managers to put pressure on her so she would quit. She learned of the plan from Carl Scharff, an executive who lost his job two weeks before his probationary period ended in 2001.

Scharff told her he was meeting with regional supervisors when he heard them discuss an idea to promote LeFlore, then put pressure on her in hopes that she would quit.

He said those supervisors thought she was lazy, but he protested after looking at her employment record, which contradicted the statements.

The managers did not follow through with the plan.

"What so upset me about what they did to Ann was that she was well qualified," Scharff told the Sunday Register. "... They were talking, 'This gal is black,' and one of the statements made was, 'These kinds of people don't get things done.' "

Mallory, the former head of work force development's human resources office, questioned Scharff's timing, noting that his accusations only came to light after he lost his job.

"I was disgruntled because people were treated unfairly," Scharff said.

State records show Iowa Workforce Development conducted an administrative investigation into the matter in January 2002. The investigation backed up Scharff's statements about the plot, but the department decided there was no discrimination or harassment.

"There is evidence, however, that IWD internal policies and procedures are not being consistently or properly applied by management in Region 10," state records to the civil rights commission noted.

Two other women, Phyllis Maskarina, who is Hispanic, and Rene Kipper-Dunbar, who is black, sued the department, claiming discrimination and retaliation.

The women were work force associates in the department's office in Mason City until they were told in 1998 that because of state budget problems they would have to transfer to Fort Dodge and Oelwein, respectively, or lose their jobs.

Both had worked in Mason City for about 10 years, and neither wanted to move, so they left the agency. They filed discrimination complaints with the Iowa Civil Rights Commission, claiming the transfers were part of a plan to get rid of them.

They also complained that their co-workers in the Mason City office used racially offensive comments, such as "nigger," and

talked about eagerly awaiting the day when affirmative action would end so "we can go back to like it was before."

About a year later, they both learned of an opening in the Mason City office for a work force adviser job. They applied, but the job went to Linda Svoboda, a lawyer and former Democratic state representative from the 1970s.

Both sued the state. Last spring, a judge dismissed the lawsuit, ruling that they failed to prove their case.

They were in the process of appealing when the state settled, paying them each \$2,500.

Printed e-mails detail conspiracy to avoid hire

The lawyer for the Iowa Workforce Development employees and prospective workers points to the case of a white woman to illustrate the lengths top department officials went to to avoid hiring certain people.

E-mail records outline a plan in May 2004 by Mallory and Jane Barto, then the department's deputy director, to avoid hiring Linda Hubbard. Hubbard had a right to a job in the department under union rules.

Mallory suggested using temporary employees to fill a vacancy to get around having to hire Hubbard.

"The woman is back on the recall list because she had carpal tunnel surgery and now is ready to return to work," Mallory wrote in e-mails obtained by the Sunday Register. "I don't want another bad apple."

Byron Orton, the state labor commissioner at the time, expressed his dismay with the idea. "This is a violation of the collective bargaining agreement and most likely a violation of the ADA," he said in an e-mail to Mallory and Barto, referring to the Americans with Disabilities Act.

The agency eventually hired Hubbard.

Continuing pattern of discrimination alleged

After years of frustration watching their complaints to the Iowa Civil Rights Commission lead to no changes, 11 people filed a new complaint in May with the commission on their behalf and on behalf of all black people who had suffered similar treatment. The complaint was the precursor to a class-action lawsuit.

The complaint includes familiar names: Beverly Clark, Linda Pippen, Yolanda Shook and Violet Ann LeFlore.

In the Iowa Civil Rights Commission complaint, the 11 employees state: "There is a continuing pattern of discrimination to prevent the hiring and retention of African American managers or African Americans in positions where they would be able to monitor or modify the racially biased hiring practices of management within IWD."

Shook's husband, Shane Shook, who is black, is part of the group.

He took the screening test and was told he failed, he said. Records show he scored 143 - above the 140 that other applicants were told was the minimum needed to pass.

He said part of the blame for the hiring practices rests with Vilsack. Shane Shook said there have been many indications of problems at the department in recent years, but the governor never interceded.

"He just doesn't want to get his hands dirty," said Shane Shook.

No laws were violated, work force agency says

Koonce said the civil rights commission has investigated past claims against the agency but "has never concluded that there was reasonable cause to believe Iowa Workforce Development had violated state or federal anti-discrimination laws."

She said the agency has successfully defended itself in other discrimination lawsuits and noted that over the years they had "enacted a number of initiatives to promote a culture that promoted the building of a diverse work force and policies to ensure the diverse work force was respected."

Mallory, who lost her job during the summer, defended herself and said claims of discrimination under her watch were "absolutely ridiculous."

"We make an effort to hire the best-qualified," she said. "If you're black and you're the best qualified, we'll hire you. ... We will not go around the system."

Reporter Tim Higgins can be reached at (515) 284-8039 or thiggins@dmreg.com

Their stories of discrimination

Read about three of the women who say they were discriminated against by Iowa Workforce Development. Pages 8A & 9A

Photos:

- BEVERLY CLARK

Was passed over for promotion at least 56 times in four years.

- VIOLET LEFLORE

Says managers had a plan to force her to quit her job.

- LINDA PIPPEN

Lost a job to a white woman who scored lower on a test.

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