

State of South Carolina
County of Richland

In the Court of Common Pleas
Fifth Judicial Circuit
Civil# 2016-CP-40-2524

Terry McCall, Prose
Appellant

vs.

Appeal Brief

Trojan Labor/Hire Quest
Employer

And

Ace American Insurance Co.
Carrier/Respondents

RICHLAND COUNTY
FILED
2016 APR 19 AM 10:07
JEANETTE V. MORRIS
C.R.P. & C.S.

Statement of Issues on Appeal

Statement of the Case

Arguments

Conclusions

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SC Court of Appeals

See Next Pages

4-12-16
Dated

State of South Carolina
County of Richland

In The Court of Common Pleas
— Judicial Circuit
CIVIL CASE # 2016 CP4002524

Terry McCall, Prose
Appellant

Appeal Brief
For WCL 1410083

Vs.

Trojan Labor/HireQuest, LLC.
And
Ace American Insurance Co.
Respondents

RICHLAND COUNTY
FILED
2016 MAY 26 PM 2:40
JEANETTE W. NORRIS
Clerk & Seal

Statement of Issue on Appeal

This issue on Appeal is based off of A. S.C. Workers Compensation Commission Chairman decision Rejecting filing fee Waiver form 32. In regards to rejecting filing fee Waiver form 32 for Filing Motion for Default against respondents, filed on April 8, 2016, Filing Fee ^{Filed} ~~Rejected~~ April 26, 2016, and Rejected April 28, 2016 by the Chairman, which had no real basis for rejecting Waiver Fee Form other than just blocking Appeal process.

Being the Appellant was incarcerated with S.C.D.C. and the fee could have been Debited from his inmate account anytime in the future when he received funds. And especially being the Chairman has granted Fee Waiver previously on a Motion in the same case.

"Statement of Issues On Appeal"

- (1). Did commissioner Err denying Appellant Benefits on June 30, 2014 injuries asserted on form 50, Where Respondents failed to file and serve Appellant Any responses in a timely manner by S.C. Code Regs 25A 67-603 B(1), Making them in Default/Treating Equal protection One-sided.
See: Adams v. Westinghouse SRS 2009 WL 9529409
- (2). Did commissioner Err where he failed to seek out records of form 50 and form 51 for June 30, 2014 injuries before conducting a hearing.
Denying Appellant Procedural Due Process
- (3). Did commissioner Err where he failed to identify two separate claim numbers in his order for June 30, July 4, 2014 job related injuries, where he stated in Transcript Pg. — he would.
See Transcript Pg 12 = line 1-24
Pg 13 = line 1-3
- (4). Did the Commissioner Err where he allowed Respondents to use material evidence not support by their testimony for impeachment purposes (Non-Convictions), wrong date alleged 2013/sled was 2014 Autobreaking (not) stealing gas out of Tamus' false info to Police, dismissed, Commissioner Did not hold hearing determine Prejudicial vs Probative
See Transcript Pg 50
line 19-22
- (5). Did Commissioner Err where he failed to ^{Follow APA Procedure} stipulate in his Order, How trip and fall did not arise out of and in the course of Employment, or when pulling wire was not or was job description (and was not disputed as by Respondents that was work related) causing Pop he heard and burning fingernog, Pain.
See: Pierre v. Seaside Farms Inc 386 S.C. 594, 689 SE2d 615 (2010) Amblyquies
See: Creach v. Duane Co. 467 SE2d 114, 320 S.C. 559
- (6). Did Commissioner Err where he based decision on conflicting testimony, when Respondents opmioned how trip@fall occurred, walking/running where testimony was standing, and onset occurrence 4 days prior to arrival, was disputed as Typeo, And conflict cured, when Respondents agreed it could be Typeo, and nothing further.
See APA 142-143
(1) (Waiving objections)

See Order
Pg. 17
Line 21

(7). Did the Commissioner Err where he denied benefits based on Previous Bitter Lengthy Complaints of Pain in lowback, neck, right shoulder, right wrist, right hand, and thirteen prior personal injury claims. And the self serving declarations of Appellant in medical report and not sufficient for compensability, where Commission did not demonstrate how the previous complaints / And prior Personal injury claims reflected his opinion in denying benefits.
See: Creech v. Duane Co., 467 SE2d 114, 320 S.C. 539

Order
See ~~Order~~
Pg 16, ~~line 15~~

(8). Did commissioner Err where he asserts the only thing that bolsters Appellants assertion that the current complaints emanate from a work related accident on June 30, 2014 (Even though date Plead) ^{In Findings} ~~See APA 143~~ July 4, 2014 - Reflects prejudice, Especially after Amending June 30, 2014 injuries. (Is the medical record found in APA file Pg 142 which he states is dated July 26, 2014. The record reads in part; Patient here for back/sciatica pain since June 30, 2014, due to work accident. But had he read the whole ^{Pg. 143 occurrence} APA file he would have found other June 30, 2014 reports as well as the Exhibit 1 by claimant that was never decided or entered by as medical evidence, ^{was June 30, 14} this type treatment prejudiced the Appellant. And how much evidence does it take to grant benefits,

(9). Did commissioner Err where he asserts in Findings of Fact ^{order} See ~~Findings~~ Pg 16 - line 18 there is nothing in the July 16, 2014 note which mentions this being workers comp. injury. But had he reviewed the record in whole on Pg 143 he would have found under "Occurred" that injury occurred at work. This prejudiced the Due Process owed to Appellant: And demonstrates the record was not reviewed as a whole as promised by commissioner

(2)

See Claimants
Exhibit 1
Medical Evidence
in Order does
Not reflect this
Exhibit 1 (why)

(10), Did Commission Err where he failed to assert the record was void of ~~June~~ ^{June} 2014 injury complaint or not void, in making his finding of fact, But had he reviewed the whole record he would have found the AFA file reflected ~~June~~ ^{June} 2014 injuries as well as the Claimants Exhibit 1 medical provider Chen Li that was never listed in the Order under Medical evidence and never used to base and opinion or decision on, therefore this prejudiced the Appellant.

Exhibit
4

(11), Did the commissioner Err where he used previous visits to hospital to deny benefits based on complaints of pain, But neglected to consider when tripped & fell, hand/wrist popped pulling wire and injured body parts that these injuries had nothing to do with basing previous pain complaints as reason to deny benefits. Where the Medical records reflect, these falls aggravated, increased pain, tingling in hand, And pain was greater, and tinged signs were noted in record. Pain lessened in shoulder/wrist, stiff, see Exhibit 4
Pain localized in more areas than one joint.

Exhibit
1

(12), Did commission Err where he did not reflect in Medical Evidence in his Order Exhibit 1 Provider Chen Li, that was Added to the record without objection at hearing. And where his finding of fact or Nothing in his Order for decision was based on this Exhibit 1 Provider Chen Li, denying Appellant due process to a fair determination.
Denial Due Process to Appellant.

(3),

- (13) Did the Commission Err where he allowed Respondents to enter Sled arrest record (December 2, 2014 arrest, (Non conviction) for giving false info to Police See Transcript p. 37, And evidence of sled arrest for stealing gas out of Gas Tanks, ^{supplies} See Transcript, _____ Dated August 1st, 2013, inconsistent with evidence in sled report Pg 13, reflects Auto breaking, 8-1-2014, And where Commissioner used this Evidence @ testimony to determine credibility, when it was inaccurate. _{inaccurate.}
- (14) Did commissioner Err where he stated in Transcript his Order would reflect to two separate Filing claim numbers if he discovered form 50 for June 30, 2014 was filed, However the Order is only reflecting one file claim Number But the decision was based on two separate filing dates, Injure dates, claims.
- (15) Did the Commissioner Err by denying to re-open ^{Motion} hearing where Newly discovered Evidence could have reflected Respondents Attempted to obtain Medical Evidence from wrong Address, And evidence of letter from Gary M. Cannon Could have proven Respondents failed to file responses (denials) in a timely manner to Form 50 for June 30, 2014 alleged injuries. After S.C. Work Comp received form 50 on November 20, 2014. by Appellant requesting A hearing.
- (16) Did Commissioner Err where he denied Motion for Reconsideration where evidence if reviewed would have established Respondents
- (4)

failed to comply to S.C. Code of law Regulation ^{25A} 67-603 B(1) " by refusing to file their responses/denials on form 51 in a timely manner. And failed to serve the Appellant with them as well, Making Respondents in Default; See: Accardi Doctrine

(17). Did the Chair Commissioner Err where he denied Appellant his right to Appeal By rejecting his request to waive filling fee. Compliance with the Statutory requirements is essential to and Appeal In forma Pauperis. But the statute should not be construed so, as to impair or unnecessarily complicate the right to Appeal. Appellant provide indigency financial proof but was still rejected to Appeal. And Regulation Was Incorrect See: Frederick V. Wellman Inc. 682 SE2d 516, See: CSS 323.
Jervey V. Martin Environmental Inc 721 SE2d 469

(18) Did commission Err by Denying Motion for Default where the Motion was filed before Respondents moved to close the case, And where the evidence was clearly established that Respondents failed to file any responses to June 30, 2014 injuries in a timely manner and failed to serve Appellant with any as well, Violating the S.C. Code of Law 25A Regulation 67-603 B(1), before the hearing as well.

(19) Did the Court Err when commissioner existed about amending form 50 June 30, 2014 or August 18, 2015, on form 50 (5), for June 30, 2014 form and not July 4, 2014 form, the commissioner was not aware June 30, 2014 form 50 was filed November 20, 2014

(20)

while pulling w/oe
The Transcript reflects walking/running when fell on hard surface, and medical record reflects just tripped & fell, ^{pg 142 APA}
And reflects some different on pg 143 APA.
And there was some confusion, but the two pgs are actually retracing (2) different ~~ways~~ ways fell.

Transcript pg (9) Middle Paragraph.
See APA File 142-143

(21)

Denying motion To Reconsider
Did commissioner Err where Respondents submitted letter they will not proffer a response to Clements motion To Reconsider Dated February 15, 2016, But submitted a second letter to commissioner Gene McCaskin dated March 2, 2016 stating, Please allow this letter to serve as the Employer/Carrier response to Mr. McCalls repeated motions to reopen record, reinvest hearing or reconsider your decision, Was this not a violation of Due Process, to submit your answer or response and be allowed to recall it or change it.

(6)

Statement of The Case

The Appellant asserts while working with Trojan Labor/HireQuest from 6-23-14- Thru 7-14-14 he suffered two (2) separate accidents. One being June 30, 2014 and another July 4, 2014 in which both accidents were reported to his supervisor. The Appellant was working through a Management Employee Program by which they placed you at the job sites, And housed in a facility for recovery called Turning Point in Greenville, S.C.

The Appellant was represented by counsel Paul Rathke with the Joel Breber firm. The Appellant filed a Motion To Relieve Counsel by which an Order to relieve was entered by Commissioner Beck October 14, 2014. At which time Appellant filed a Prose Form 50 alleging injuries sustained on June 30, 2014 received by the S.C. Commission Judicial Dept November 20, 2014. And Appellant has confirmation with certificate of Service proof. And by letter dated February 19, 2015 from Executive Director, Gary M. Cannon with S.C. Workers Comp. Commission stating "we received your form 50" "alleging June 30, 2014 injuries," hearing requested on November 20th, 2014. (NO Denials were filed - with form 51)
On November 18, 2014 A Form 50 was filed alleging injuries sustained on July 4, 2014 by S.C. Workers Comp Commission.
The Employer timely filed a form 51 denying the claim in its entirety, on December 17, 2014.

Pursuant to forms 50 and 51 a hearing was set before Commissioner Wilkerson in Greenville, S.C. on April 1st, 2015 at which time Appellant needed more time to seek out counsel. The Commissioner Wilkerson issued an Order April 8, 2015 returning the file to general files until Appellant found or sought counsel, allowing the Carrier to file form 19 seeking closure of the claims in the event the Appellant failed to pursue benefits within (60) days.

By correspondence April 22, 2015 Appellant advised he was requesting another hearing. A notice was issued setting forth the case for hearing before Commissioner James on July 8, 2015 on the forms 50 and 51 in Greenville, S.C. On May 18, 2015 the hearing was postponed due to Appellants transfer from Greenville, S.C. to Kirkland Correctional Inst R&E center, and not Broad River as the Order has written which is incorrect.

The hearing was re-set for 8-28-15 before Commissioner Gene McCaskey at 4444 Broad River Rd. S.C.D.C. Headquarters.

On 8-18-2015 Appellant filed Motion to Amend Form 50 July 4th, 2014 injuries to assert repetitive trauma. On February 7, 2015 The form 50 July 4th injuries was amended, to assert additional injuries to Left Foot, Right Elbow, with current list injuries of Neck, back, right shoulder, right wrist, Right hand, and hernia.

Appellant asserted entitlement to temporary total disability

(a)

benefits from June 30, 2014 injuries. And continuing as well need additional medical treatment for all these body parts, the Carrier/Respondents verbally denied the claim but there was never a form 51 filed or served on Appellant or the Commissioner Judicial Dept for June 30, 2014 injury's ^{for} form 50, which by failure to comply with regulation 67-603 B(1), Commissioner should have entered default. But did not consider it.

The Commissioner McCasKill heard July 4, 2014 claims for injuries of form 50, and allowed to consolidate the injuries sustained on June 30, 2014 to be heard ~~in~~ with July 4, 2014 hearing. Injuries, The Appellant was questioned as to, there was no form 50 for June 30, 2014 injuries before the Commissioner/Court. At which Appellant explained he filed it. There was no concerns by Commissioner McCasKill or questions asked where Form 51 was at. At which this type treatment was prejudicial. And no hearing should have been held until it was clear that Appellant filed form 50, as well as if Respondents Filed A form 51. A continuance should have been granted.

The Commissioner McCasKill stated on the record that if he sought the record for Form 50 June 30, 2014 injuries. And did not find any evidence of it, then the decision in his order would not reflect these June 30, 2014 injuries, however the Order does reflect denial for June 30, 2014, and July 4, 2014.

Injuries which is evidence within the Order that Appellant filed form 50 in a timely manner for June 30, 2014 injuries as well as the July 4, 2014 injuries. There being no evidence was ever presented by the respondents that they filed their form 51 / or letter for timely responses/denials, or nothing noted in the Order, The Commissioner should have denied the Respondents relief. And Granted benefits to the Appellant being the Respondents did not meet their Regulatory Requirements, filing responses to the June 30, 2014 injuries form 50, Making Respondents in default.

The Appellant also proceeded with a motion for Reconsideration after the Exhibit 1 by Appellant was never part of the Medical Evidence in the Order, Nor did the commissioner use it in his decision / Finding of Law, or Conclusions to base his decision. This evidence was entered at hearing without objection by Respondents, but never ruled upon.

As well as the Respondents forwarded their request/subpoena to obtain medical records from Orthopedic Clinic to incorrect address. And Commissioner denied motion.

Commissioner Also Denied Motion for Newly Discovered Evidence after Appellant supplied letter from Executive Director Gary McCannor proving Appellant did file form 50 for June 30, 2014 injuries, and Respondents failed to reply in timely manner.

(4).

After the Commissioner denied All motions, the Appellant moved to Appeal, Requesting review by Commissioner and requested to waive filing fee, The Chair Person rejected the form 32 pursuant to the Wrong Un documented Un Published Regulation 67-782 And stated the Appellant must pay the Filing Fee within 10 days or Appeal would be denied. This ends the case.

The Appellant did seek out Reconsideration by Chair as to waiving Filing Fees, but has ~~not~~ received response, Rejecting filing Fee with the wrong Regulation cited.

Requested reconsideration but have not had reply.

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29936

(5)

"ARGUMENTS"

- (1) The Commissioner denied Appellant Procedural Due Process/Equal Protection of the Law and violated fundamental fairness clause by Not finding Respondents in Default? Granting Appellant Benefits
- (2) The Commissioner was improper and one-sided with prejudice failing to seek out the records for Form 50 June 30, 2014 injuries and not treating Appellant with due process seeking out records for Form 51. The Commissioner was only concerned with filing requirements by Appellant and not filing responses by the Respondents reflecting prejudice to Appellant.
- (3) The Commissioner stated in Transcript _____ the Order would identify two separate file numbers if he found June 30, 2014 Form 50, and reflect both in his Order which he did not, which reflects untruthfulness
- (4) The Commissioner should have reviewed the Sted record and before making his Order, he could have seen the material evidence submitted by respondents for impeachment purposes was not an accurate ~~and~~ with their testimony; which could have gave the Commissioner a different understanding and belief of Appellants credibility. And not making his decision off ~~and~~ untrue testimony.
(In Part), See:

(1)

(5) Single Commissioner Erred in concluding that Workers Compensation Claimant/Appellant did not suffer injury by accident or injury did not arise out of the course of employment. Within the meaning of Workers Comp Act A.P.A. Because he failed to establish how injury did not arise out of and in the course of employment, and did not use the medical evidence admitted at hearing to determine how the injury did not arise out of and in course of employment. Denying Appellant Due Process of the Law.
See: Creech v. Duane Co. 467 SE^{2d} 114, 320 S.C. 559

(6) The Commissioner Erred where he based his decision on how trip and fall occurred and the onset of injury date reflected a disputed date being typed, with Respondents curing any disagreement, stating yes it could be typed, by which commissioner stated in record he did not see anything that bolstered the medical record Pg 142 APA file being a work related injury, but had he turned to Pg 143 APA File, its apparent the injury occurred at work. Denying Appellant Due Process, reviewing the record in whole.

(7) The Commissioner used prejudicial language in his order, as using the word "Bitter" to describe why he denied benefits as to previous lengthy complaints of pain by Appellant. But used a terminology of the word Bitter referring to his feelings toward Appellants

(2).

history of previous visits to the hospital, which the word bitter defined is: something having a bad taste, not likeable, therefore reflecting personal feelings, why could he not referred to denying benefits for prior lengthy previous visits to hospital for para. The term Bitter reflects BIAS / Prejudice

(8) The Commissioner should have sought to review the record of medical evidence ~~in~~ whole and included the Exhibit 1 by claimant that Pg 143 APA File reflects injury occurred at work June 30, 2014. And Exhibit 7 medical evidence enter in evidence but not included in decision in order reflected June 30, 2014 injury job related, "Procedural Due Process Denied" to Appellant.

(9) The Commissioner avoted the only evidence that bolstered the current June 30, 2014, ~~single, date~~ Complaints being a work related accident even though Plead July 4, 2014 were on Pg 142 APA file, But had he sought the record out in whole, the Pg 143 APA file would have provided evidence that the accident was work related.

(10) The Commissioner Violated Procedural Due Process to Appellant by not including Exhibit 7 in his opinion, decision / Finding of Fact / Conclusion of Law, ~~And stating the~~

(11) The Commissioner Erred where he did not stipulate how injury did not rise out of and in the course of Employment, where the record/order is bare to the Requirements with APA to state the underlying facts how tripping fall, putting wire, pop in hand/wrist And aggravation to these alleged injured body parts, had no causal connection to employment And claimants ordinary job duties, And how they did not arise out of the course of employment.

(12) The Commissioner Violated Appellants rights to due process where he did not incorporate claimants Exhibit 1 medical evidence Provider Chen Liti to the Medical Evidence, And did not decide on this evidence in making his determination for denying ~~or~~ benefits.

(13) The Commissioner denied Appellant due Process where he failed to review the record in whole finding Respondents testimony used in impeaching Appellant was not corroborated or supported by the Steel arrest record fully, therefore creating a conflict as to credibility toward Appellant.

(14) The record is void of two filing claim numbers as Commissioner referred to, And stated there would be two, if it was final form 50 for June 30, 2014 review was filed, to identify that filings.

(4)

(15), The Commissioner denied due process to Appellant by denying All motions where evidence if viewed in whole supported the Motions; But Commissioner stated if he view evidence he would still not be persuaded his opinion would differ, denied the Appellant due process,

(16) see (15) ↑

(17), The Commissioner Chair Person Erred denying Appellant rights to Appeal where financial statement support indigency status, And where Regulation cite was NOT found in S.C. Code of Law Regulations 67-792 UNKNOWN. denying, rejecting to waive filing fees.

(18) The Commissioner Erred denying Motion for Default Judgment where Respondents Violated S.C. Code of Law 25A Regulation 67-603 B (1),

(19). Did the Court Err where it was confused about Amending form 50, June 30, 2014 injuries August 18, 2015, to, June 30, 2014 form 50 filed November 20th, 2014.

(20), The Commissioner was Err where he did not read that the APA File 142 @ 143 were inconsistent and made Appellant look to have less credibility. (5)

Conclusions

The Appellant believes the Court should find the Respondents in Default on the failure to respond to Form 50, for June 30, 2014 injuries, Grant the evidence that the Respondents failed to obtain from the Orthopedic Clinic to be used in regards to Appellants written out of work, applying benefits from the time default occurred until Appellant seeks medical treatment, and is found to be able to return to work, and order Medical Benefits immediately and issue injunctive order that S.C.D.C. prison system provide transportation to physician visits, and anything else that is needed, or if Default is not granted, that the case be remanded back to the full panel for review for Violation of Request to Waive Filing Fee or that the benefits be granted by the Circuit Court, or as the Court deems just and proper

Dated 4/12/16

S. Jerry McCall
Jerry McCall 233236
RCI-C-A-32
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CONCLUSIONS

The Appellant request the Court to Reverse the Commissioner's decision, And grant New Hearing, to Allow Exhibit "1" to be heard, And Reviewed And included in the Commissioner's decision And Order, And to Allow due process to Appellant, where no Law, statute or Ruling was incorporate in the final Order, making the Order in Violation of the Law. Or grant New Hearing, to Appellant, or As the Court deems just And proper.

Date 4-12-16

Richard, S.C.

4-12-16

Respectfully Submitted
Sincerely
Mr. Terry McCall

Terry McCall 233236
G.C.F. D-3-25B BB
4556-Broad River Rd
Columbia, S.C.

29210

(21). Did the Commissioner Err in allowing Respondents to submit their response not to proffer the reconsideration Motions, and then use a second response reflecting Respondents did object to the reconsideration Motions. And by the Commissioner using their second response objecting there was when he denied the claim.

(6)

Certificate of Service

I, Terry McCall hereby certify that I have served the party listed below with Appeal Brief by placing same in U.S. Postal mail service postage prepaid Affixed and mailed to address below:

Richlandland County Clerk of Court

P.O. Box 2766

Columbia, S.C.

29202

Dated 4/12/16

s Terry McCall

Terry McCall 233236

REG-CA-32

P.O. Box 2039

Ridgeland, MS

29936

APR 19 2016
TERRY M. McBRIDE
P. & G.S.

APR 19 AM 10:07

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New Address

Terry McCall ^{S.C.D.C.#} 233236
Goodman Correctional Inst.
Dorm 3-25-B Side-
4556 Broad River Rd
Columbia, S.C.
29210

12-9-2016
DATE

Oral arguments requested
20 minutes

In Re: Filing, "Motion To Proceed In Forma Pauperis, And
Appeal Brief / Requesting Oral Arguments
20 minutes Requested

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Dear Clerk of Court,

SC Court of Appeals

Find enclosed the Motion/Affidavit to Proceed
In Forma Pauperis, "Appeal Brief" And documents, That
need filing. Please Place the Motion before the Judge
for review immediately.

Return to me a clocked in copy of All documents
for my records. And return me a copy.

This is a Pro Se filing and I've filed a Motion
requesting the S.C. A.C. Rules be relaxed in this matter.

"This Appeal is not late", However it was just removed from
the Court of Common Pleas After Inadvertently placing it
in the incorrect court, Timely filed.
And "Rejected" by S.C. Workers Compensation Chair person.
on form 32, to waive filing fees, to full commission. This
is how it got to Court of Appeals. So lets file it
and let the Judge decide.

(Return me filed copies)

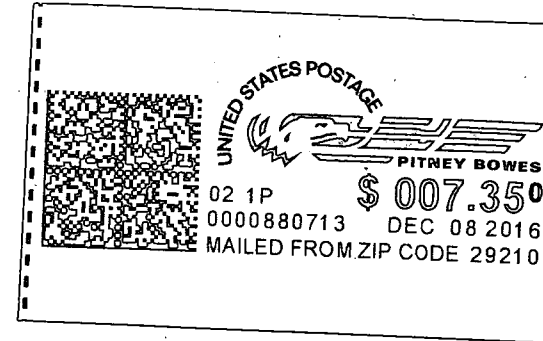
S Terry McCall

Please

Jerry McLain 203200
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