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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No.: 18-ALJ-22-0181-CC

Appellate Case No. 2018-001740

Clara L. Brockington,

Appellant,

v.

South Carolina Department of Employment
and Workforce,

Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Administrative Law Court err in granting summary judgment for the Department when the specific issue under appeal, whether Appellant owes the Department a debt, had been previously litigated by the parties and was therefore barred from relitigation by the doctrines of *res judicata*, collateral estoppel, and the law of the case?
- II. Has Appellant abandoned any issues challenging the Administrative Law Court's decision by failing to make any arguments in her brief, supported by citation to legal authority?

STATEMENT OF THE CASE

Appellant Clara L. Brockington owes Respondent South Carolina Department of Employment and Workforce (the Department) a debt as a result of receiving unemployment insurance (UI) benefits that she was not entitled to receive. (Motion *in limine*, 7/3/18, Exhibit 17). After providing Appellant with notice and opportunity to be heard, the Department's Appeal Tribunal issued a decision, affirming that Appellant was overpaid in UI benefits and required to repay the debt to the Department. (Motion *in limine*, 7/3/18, Exhibit 17). Appellant did not appeal that decision, and it became the final decision as a matter of law on the character and original amount of the debt. The Department sent Appellant a Notice to Debtor letter advising her of the Department's intent to submit Appellant's outstanding debt to the South Carolina Department of Revenue (DoR) to be set off against any state income tax refund Appellant may receive. (Motion *in limine*, 7/3/18, Exhibit 21). Appellant appealed the Department's Notice to Debtor to the Appeal Tribunal, and the Tribunal issued a decision on April 20, 2018, affirming that Appellant's debt to the Department is correct and rightfully due. (Motion *in limine*, 7/3/18, Exhibit 22).

Subsequently, Appellant filed an appeal with the Administrative Law Court (ALC) on May 9, 2018. (ALC Notice of Assignment, 5/25/18). On July 3, 2018, the Department filed a motion *in limine* with the ALC, arguing that Appellant was barred from raising any issues regarding the character or original amount of the debt owed to the Department because she did not appeal the Department's final decision affirming the overpayment. (Motion *in limine*, 7/3/18). The Department filed a Supplemental Motion *in limine* on July 19, 2018, in response to Appellant's prehearing statement. (Supplemental Motion *in limine*, 7/19/18). The ALC construed the Department's motions as motions for summary judgment, granted summary judgment, and held

the Department was entitled to collect the overpayment through the Setoff Debt Collection Act.
(ALC Order, 8/21/18). This appeal followed.

STATEMENT OF THE FACTS

Appellant filed a claim for UI benefits on July 14, 2016, while still working for Stein Mart. (Motion *in limine*, 7/3/18, Exhibit 2). Stein Mart informed the Department that Appellant was accepting all available hours as a part-time employee. (Motion *in limine*, 7/3/18, Exhibit 3). As a result, the Department mailed a determination holding Appellant eligible to receive \$326.00 per week effective July 10, 2016, with a maximum potential benefit amount of \$6,069.00. (Motion *in limine*, 7/3/18, Exhibit 4).

Appellant filed a claim for UI benefits each week for twenty consecutive weeks, from the claim week ending July 16, 2016, through the claim week ending November 26, 2016. (Motion *in limine*, 7/3/18, Exhibit 5). Appellant was asked each week she filed a claim for UI benefits whether she had worked during that week and, if so, the gross wages she earned during that week. Appellant reported wages to the Department each week. Pursuant to S.C. CODE ANN. § 41-35-60, the Department deducted from Appellant's weekly benefit amount the wages Appellant reported in excess of one-fourth her weekly benefit amount. (Motion *in limine*, 7/3/18, Exhibit 5). Appellant received the maximum benefit amount for her benefit year during the claim week ending November 26, 2016, and stopped filing weekly claims. (Motion *in limine*, 7/3/18, Exhibit 5).

The Department initiated a routine audit of Appellant's claim for UI benefits by requesting that Stein Mart report the amount of wages it paid Appellant each week from the claim week ending July 16, 2016, through the claim week ending September 24, 2016. (Motion *in limine*, 7/3/18, Exhibit 6). Stein Mart reported it paid Appellant significantly more wages than the wages Appellant reported to the Department. (Motion *in limine*, 7/3/18, Exhibit 7). The Department sent Appellant a Notice of Audit Results listing the discrepancies between the wages she and Stein Mart reported, and provided Appellant with the opportunity to respond. (Motion *in limine*, 7/3/18,

Exhibit 8). A family member responded on Appellant's behalf indicating Appellant was ill. (Motion *in limine*, 7/3/18, Exhibit 9).

The Department expanded its audit to include the claim week ending October 1, 2016, through the claim week ending November 26, 2016. (Motion *in limine*, 7/3/18, Exhibit 10). Stein Mart again responded that it paid Appellant more wages for the additional weeks than the wages Appellant reported to the Department. (Motion *in limine*, 7/3/18, Exhibit 11). The Department sent Appellant a second Notice of Audit Results listing the additional discrepancies between the wages she and Stein Mart reported and offered Appellant another opportunity to respond. (Motion *in limine*, 7/3/18, Exhibit 12). A family member again responded on Appellant's behalf, indicating Appellant was ill. (Motion *in limine*, 7/3/18, Exhibit 13). A Department auditor documented a conversation with Appellant on February 24, 2017, during which Appellant stated she could not remember how she determined the wages she reported each week due to her medication and she could not confirm the wages she reported. (Motion *in limine*, 7/3/18, Exhibit 14). As a result of its extensive fact-finding, the Department issued a determination March 1, 2017, adjusting the amount of UI benefits Appellant should have received based on the higher wages Stein Mart reported, and holding Appellant overpaid \$858.00. (Motion *in limine*, 7/3/18, Exhibit 15).

The determination included appeal rights informing Appellant that it would be the final Department decision unless she appealed to the Appeal Tribunal within ten calendar days. (Motion *in limine*, 7/3/18, Exhibit 15). Appellant appealed to the Appeal Tribunal and the Tribunal scheduled an appeal hearing to discuss Appellant's overpayment. (Motion *in limine*, 7/3/18, Exhibit 16). After providing Appellant with notice and opportunity to be heard, the Tribunal issued Decision No.: 2017-A-03272 affirming the overpayment determination. (Motion *in limine*, 7/3/18, Exhibit 17). Specifically, the Tribunal found Appellant "could not provide any explanation on

what dollar value she was reporting when filing weekly claims. She maintains that she was ill and therefore had no recollection of the circumstances of filing weekly claims.” (Motion *in limine*, 7/3/18, Exhibit 17). Further, the Tribunal held Appellant “received benefits for the weeks in question to which she was not entitled,” was “overpaid in benefits in the amount of \$858.00,” and “is liable to repay the amount back to the Department.” (Motion *in limine*, 7/3/18, Exhibit 17).

The Appeal Tribunal decision included appeal rights informing Appellant that the decision would be the final Department decision unless Appellant filed an appeal to the Appellate Panel within ten calendar days of the mailing date of the decision. (Motion *in limine*, 7/3/18, Exhibit 17). Appellant did not appeal the Tribunal decision, and it became the Department’s final decision regarding the character and original amount of the overpayment. *See* S.C. CODE ANN. § 41-41-40(A)(3) (“Notwithstanding another provision of law, a final decision of the department or court establishing the character and amount of overpayment is final for all purposes and proceedings.”).

As a result, Appellant’s debt owed to the Department is valid and collectable, and the Department initiated collection activities. (Motion *in limine*, 7/3/18, Exhibit 18). In response, Appellant submitted a payment of \$58.00 on May 8, 2017, stating: “Out of work. Under doctor’s care. Had additional surgery on May 1, 2017. Will pay an amount monthly that is affordable by my family members. Thanks for your patience.” (Motion *in limine*, 7/3/18, Exhibit 19). Appellant made an additional payment of \$48.00 on July 6, 2017, bringing her outstanding overpayment balance to \$752.00. (Motion *in limine*, 7/3/18, Exhibit 20).

On February 12, 2018, the Department informed Appellant of its intent to submit Appellant’s outstanding \$752.00 balance to DoR to be set off against any state income tax refund Appellant may receive. (Motion *in limine*, 7/3/18, Exhibit 21). Appellant appealed the Notice of Debtor to the Appeal Tribunal, and the Tribunal issued a decision on April 20, 2018, affirming

that the \$752.00 was correct and rightfully due from Appellant. (Motion *in limine*, 7/3/18, Exhibit 22). Appellant timely filed a request for contested case with the Administrative Law Court on May 9, 2018, arguing she did not owe any money. (Motion *in limine*, 7/3/18, Exhibit 1). Despite this assertion, Appellant subsequently made a payment of \$31.00 toward the overpayment on May 15, 2018, bringing her current balance to \$721.00. (Motion *in limine*, 7/3/18, Exhibit 20).

The Department filed a motion *in limine* on July 3, 2018, arguing that the doctrines of *res judicata*, collateral estoppel, and the law of the case barred Appellant from raising any substantive issues regarding the character or amount of the original debt because Appellant did not appeal the Tribunal's decision affirming the overpayment. (Motion *in limine*, 7/3/18). The ALC construed the Department's motion as a motion for summary judgment. (ALC Order, 8/21/18). The ALC held the Department was entitled to collect the overpayment through the Setoff Debt Collection Act, finding "the [Appellant's] right to seek relief from this court pursuant to the Setoff Debt Collection Act does not include a right to relitigate issues which should have been presented to the Department's Appellate Panel....Because [Appellant] did not timely appeal the underlying decision, she is barred from relitigating issues that she failed to appeal at the proper time." (ALC Order, 8/21/18). Further, the ALC found that the only issue raised by Appellant, that she did not owe the Department any money, "falls squarely within the matters decided after the Department's March 21, 2017 hearing and relitigation of that issue is barred by *res judicata*." (ALC Order, 8/21/18). This appeal followed.

STANDARD OF REVIEW

“When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted). The ALC may use the South Carolina Rules of Civil Procedure (SCRCP) in a contested case when practicable and where no ALC rule applies. *See* SCALC Rule 68. Pursuant to Rule 56(c), SCRCP, summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See also Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 32, 530 S.E.2d 369, 370 (2000).

A reviewing court must consider the evidence, and all reasonable inferences and ambiguities, in the light most favorable to the non-moving party. *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 562-63, 564 S.E.2d 94, 96 (2002). Nonetheless, summary judgment should be granted when clear and indisputable facts are present over which reasonable people cannot differ. *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 544, 431 S.E.2d 565, 566 (1993). Further, “summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner,” and the movant must prevail as a matter of law. *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2001); *see also Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 576, 762 S.E.2d 696, 700 (2014).

ARGUMENT

I. THE ALC DID NOT ERR IN GRANTING SUMMARY JUDGMENT BECAUSE THERE ARE NO GENUINE ISSUES OF MATERIAL FACT AND THE DEPARTMENT MUST PREVAIL AS A MATTER OF LAW.

The ALC did not err in granting summary judgment because there are no genuine issues of material fact and the Department must prevail as a matter of law. The dispositive issues in this case are: (1) whether the debt being pursued by the Department under the Setoff Debt Collection Act is a valid debt; and (2) whether Appellant is responsible for the payment of the debt. *See* S.C. CODE ANN. § 12-56-10 et seq. The Setoff Debt Collection Act defines “delinquent debt” broadly as “any liquidated sum due and owing any claimant agency...*which have accrued through contract, subrogation, tort, operation of law, or any other legal theory.*” *Gardner v. S.C. Dept. of Revenue*, 353 S.C. 1, 17, 577 S.E.2d 190, 198 (2003) (emphasis in original). Appellant’s debt to the Department accrued through the operation of law when she improperly received UI benefits by failing to correctly report her wages, and the law holds Appellant responsible for repaying that debt to the Department.

It is undisputed that the Department determined that Appellant was overpaid UI benefits because she did not properly report the wages she earned from her part-time work with Stein Mart and that Appellant must repay those UI benefits. *See* S.C. CODE ANN. § 41-35-60 (requiring the Department to deduct from Appellant’s weekly benefit amount the wages she earned in excess of one-fourth her weekly benefit amount); and S.C. CODE ANN. § 41-41-40(A)(1) (requiring Appellant to repay to the Department the excess benefits she was not entitled to receive). It is undisputed that the Appeal Tribunal, after taking Appellant’s sworn testimony, issued a decision affirming that Appellant did not properly report her wages, was overpaid in UI benefits as a result, and was responsible for repaying the benefits. Finally, it is undisputed that the Appeal Tribunal

decision became final when the Appellant did not appeal to the Appellate Panel. *See* S.C. CODE ANN. § 41-35-680. As a result, the Appeal Tribunal's decision establishing both the character and original amount of Appellant's debt is final as a matter of law. *See* S.C. CODE ANN. § 41-41-40(3) ("Notwithstanding another provision of law, a final decision of the department or court establishing the character and amount of overpayment is final for all purposes and proceedings."). Consequently, Appellant owes the Department a valid debt that accrued through the operation of law, which the Department has properly submitted to DoR for collection under the Setoff Debt Collection Act.

The South Carolina Supreme Court has "repeatedly held that, under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." *Bennett v. S.C. Dep't of Corr.*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991); *see also Wright v. Marlboro Cnty. Sch. Dist.*, 317 S.C. 160, 163-64, 452 S.E.2d 12, 14 (Ct. App. 1994) ("Under the doctrine of *res judicata*, a final judgment on the merits in a prior action will preclude the parties from relitigating any issues actually litigated or those that might have been litigated in the first action."). As long as a UI claimant was afforded a full and fair opportunity to present any issues related to the establishment of any overpayment, those issues will later be barred by collateral estoppel from a court's consideration. *See id.* Furthermore, any "unappealed ruling is the law of the case." *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010).

Three elements must be present to establish *res judicata*: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue involved in the suit. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). All three elements are present in this case. The parties in the case before this Court are the same as the parties before the

Appeal Tribunal, the subject matter remains Appellant's debt to the Department, and the Appeal Tribunal adjudicated the dispute in Appeal Tribunal Decision No.: 17-A-03272. Appellant had the opportunity to appeal that decision, but chose not to. As a result, the Tribunal's decision that Appellant received \$858.00 of UI benefits she was not entitled to became final for all purposes and proceedings. *See* S.C. CODE ANN. § 41-35-680; S.C. CODE ANN. § 41-41-40(3). By not filing an appeal of Appeal Tribunal Decision No.: 17-A-03272, Appellant abandoned her only opportunity to gain a favorable ruling on the underlying issues that created her overpayment, and the Tribunal's "unappealed ruling is the law of the case." *Transp. Ins. Co., supra; see also Bennett, supra*. Appellant was afforded a full and fair opportunity to argue she did not owe the Department a debt and, therefore, under the doctrines of *res judicata*, collateral estoppel, and the law of the case, the ALC was correct in granting summary judgment and prohibiting Appellant from relitigating the issue.

II. APPELLANT HAS ABANDONED ANY ARGUMENT THAT THE ALC'S ORDER GRANTING SUMMARY JUDGMENT WAS ERRONEOUS OR AFFECTED BY AN ERROR OF LAW BY FAILING TO MAKE SUBSTANTIVE ARGUMENTS IN HER BRIEF, WITH CITATION TO LEGAL AUTHORITY.

Pursuant to Rule 208(b)(1), SCACR, Appellant's initial brief **shall contain** a table of contents and cases, a statement of issues on appeal, a statement of the case, the standard of review, an argument, and a conclusion. (Emphasis added). Broad, general statements may be disregarded by this Court, and each argument must be accompanied with citations of authority. *Id.* According to Rule 260(a), SCACR, this Court "shall" dismiss an appeal whenever an appellant fails to comply with the requirements of the Court's rules. These rules are designed to assist the Court and the parties in clearly identifying and resolving issues under dispute. As such, "appellants have the responsibility to identify errors on appeal, not the Court." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001). Moreover, "[a]n issue raised on appeal but not argued

in the brief is deemed abandoned and will not be considered by the appellate court.” *Fields v. Melrose Ltd. P’ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993).

Appellant’s brief does not satisfy the fundamental requirements for the content of a brief. Instead of complying with this Court’s rules designed to facilitate appellate review, Appellant’s brief is nothing more than a few broad, general statements that gesture toward disagreements with the ALC’s order, followed by an argument that is simply a recitation of irrelevant facts and is completely devoid of any discussion of, or citation to, legal authority. As a result, Appellant has abandoned the issues raised in her Statement of Issues on Appeal, and this Court is precluded from considering them.

Appellant identified five issues on appeal:

1. Did the Courts refused to address the facts that the petitioner never received discovery requested and erred in making a decision that the case could not proceed without discovery?
2. Did the Courts erred in failing to review the prehearing statement prepared by the petitioner to support subject matter jurisdiction and summary judgment?
3. Did the Courts erred in noticing that no documentation was submitted by the respondents notifying the petitioner disqualified the petitioner from receiving funds at any time?
4. Did the Courts erred in failing to see that check stubs (back and front) were requested by the petitioner, but never received from the respondents?
5. Did the Court erred in granting a reversed decision in S.C. Code 12-56-65 in favor of the petitioner because all evidence supported by petitioner does not show petitioner owes monies to respondents? Also, the respondents does not provide check stubs, etc., showing the petitioner received monies after being disqualified by respondents.

(App.Br.p.1)

These broad, general statements vaguely raise issues with either the ALC’s order or the Department’s alleged failure to provide Appellant with “discovery.” (App.Br.pp.i-ii). Appellant then proceeds, however, with an argument that in no way references any of the broad, general issues she identified as under appeal. (App.Br.pp.2-6). Instead, Appellant spends her entire argument rehashing the facts of her job separation from the South Carolina Department of Social

Services (DSS), an issue completely irrelevant to the debt under dispute.¹ Appellant does not make a single argument in support of any of the five issues she identified in her Statement of the Issues. Further, Appellant does not cite any legal authority that would support any argument that the ALC erred in granting summary judgment. As a result, this Court should deem as abandoned all of Appellant's designated issues on appeal. *See Fields, supra; Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.”); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned when an appellant fails to provide arguments or supporting authority for her assertion).

¹ Appellant established a valid claim for UI benefits effective June 21, 2015, when she was separated from employment with DSS. (Supplemental Motion *in limine*, 7/19/18, Exhibit 1). The Department held Appellant eligible to receive UI benefits and Appellant received the maximum amount of UI benefits before her benefit year ended on June 20, 2016. (Supplemental Motion *in limine*, 7/19/18, Exhibits 2 and 3). Appellant then established a second valid claim for UI benefits effective July 10, 2016, based on her part-time employment with Stein Mart. (Motion *in limine*, 7/19/18, Exhibit 2). The debt the Department has referred to DoR for collection was the result of Appellant's failure to properly report the wages she earned each week from Stein Mart. Therefore, Appellant's job separation from DSS has nothing to do with the issue under appeal.

CONCLUSION

Based on the foregoing, this Court should affirm the ALC's grant of summary judgment because Appellant is barred by the doctrines of *res judicata*, collateral estoppel, and the law of the case from relitigating the character and original amount of the debt referred to DoR for collection under the Setoff Debt Collection Act. Furthermore, this Court should find that Appellant has abandoned every issue she raised in her Statement of the Issues on Appeal because she did not make any argument, with citation to legal authority, in support of any of her identified issues.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Famolari", written over a horizontal line.

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July 19, 2019

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Case No.: 18-ALJ-22-0181-CC

Appellate Case No. 2018-001740

Clara L. Brockington,

Appellant,

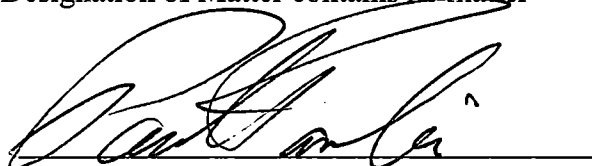
v.

South Carolina Department of Employment
and Workforce,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief and Designation of Matter contains no matter which is irrelevant to this appeal.



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THE STATE OF SOUTH CAROLINA
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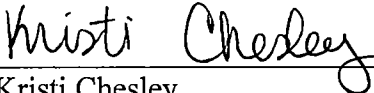
Respondent (s).

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter of the South Carolina Department of Employment and Workforce on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on July 19, 2019, addressed to the parties at their addresses of record:

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July 19, 2019

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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RE: Clara L. Brockington v. South Carolina Department of
Employment and Workforce
Appellate Case No: 18-001740

Dear Ms. Kitchings:

Enclosed are the original Initial Brief and Designation of Matter of Respondent South Carolina Department of Employment and Workforce. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Paul Famolari
Attorney for Respondent South Carolina
Department of Employment and Workforce

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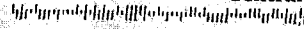
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