Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 19, 2013

CLAIM NO. 201086637

MOHAMED OULDSIDIRIJAL PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

HOMETOWN BUFFETT,
WISHARD MEMORIAL HOSPITAL,
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART AND REMANDING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Mohamed Ouldsidirijal ("Mohamed") seeks review of the opinion, award and order rendered November 17, 2012 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits and

medical benefits for a work-related hernia/groin injury sustained on June 2, 2010. Mohamed also seeks review of the December 27, 2012 and May 6, 2013 orders denying his petition for reconsideration.

On appeal, Mohamed argues the ALJ erred in finding Hometown Buffet was not obligated to reimburse him for his round trip taxi expenses from Columbus to Cincinnati, Ohio he incurred to attend an independent medical examination ("IME") requested by his employer. Pursuant to KRS 342.205(2), Mohamed argues he is at least entitled to expense reimbursement at the state mileage rate. Mohamed also argues the ALJ erred as a matter of law in finding the medical expenses associated with Wishard Health Services were not compensable. We agree the ALJ erred in finding Mohamed is not entitled to at least some expense reimbursement and vacate that portion of the ALJ's decision as to compensability of the Wishard Health Services expenses.

Mohamed filed a Form 101 on December 6, 2010 alleging he injured his "bilateral groin/hip and back" when he slipped and fell while carrying a container working as a line server for Hometown Buffet on June 2, 2010. In support of his claim, Mohamed submitted various medical records indicating he sought treatment from numerous medical

providers for groin and low back pain following his slip and fall. Mohamed was eventually diagnosed with a bilateral inguinal hernia by Dr. Anthony George in July 2010. Surgery was performed by Dr. Farid Kehdy of the University of Louisville Hospital on September 10, 2010 to repair the hernia. Subsequently on August 5, 2011, Hometown Buffet filed a medical fee dispute and motion to join Wishard Memorial Hospital, disputing a recommended second hernia procedure based upon the opinions of Dr. Matthew Burton. It asserted the proposed surgery was scheduled for July 26, 2011, but that no request for precertification had been received.

Mohamed testified by deposition on February 9, 2011 and at the hearing held September 18, 2012. Mohamed was born on December 12, 1969 and is originally from Mauritania, North Africa. At the time of the deposition, Mohamed testified he resided in Louisville, Kentucky. At the hearing, Mohamed testified he moved to Indianapolis, Indiana for approximately a year, and then to Columbus, Ohio.

Mohamed began working for Hometown Buffet in Louisville as a line server in March or April 2010. His job duties entailed maintaining the salad bar and required him to carry containers. On June 2, 2010, Mohamed testified he

was carrying a container of melting ice to the dishwasher when he slipped and fell. He stated he lost consciousness for an unknown period of time. Upon awakening, he felt pain in his abdomen/groin area and low back. Subsequent to his fall, he worked for half a day, and has not worked since. Mohamed went to the emergency room at Baptist East Hospital on the date of the accident. He was subsequently treated by several medical providers, including Baptistworx, Norton Audubon Hospital, Dr. Regulo Tobias, Dr. Anthony George, Park Duvalle Medical Center, and the University of Louisville Hospital. Subsequent to his hernia surgery, he returned to the University of Louisville Hospital complaining of scrotal and hemorrhoid pain in September 2010. The following day, he went to the emergency room at Jewish Hospital. In September 2010, he also returned to Park Duvalle Medical Center.

In May 2011, Mohamed treated at Wishard Hospital and continued to receive treatment there until February 2012. Mohamed testified he was diagnosed with a recurrent bilateral inguinal hernia and is restricted from “anything heavy.” Mohamed is currently prescribed Gabapentin and Lidoderm patches by a physician with Wishard Health Services. He testified he continues to experience problems with the right side of his abdomen and intermittent low back

pain. Mohamed denied any physician has informed him he needs a second surgery to repair the hernia.

The parties submitted various medical records. Of relevance is the report of Dr. Farid Kehdy who performed a laproscopic bilateral inguinal hernia repair on September 10, 2010 at the University of Louisville Hospital. Hometown Buffet filed records from University Physicians Associates reflecting Mohamed presented on September 28, 2010 complaining of scrotal ecchymosis and edema, and an external hemorrhoid. Upon examination, the treating physician noted "no recurrent hernia tender L spermatic cord B testes descended."

Mohamed submitted the March 16, 2011 record of Dr. Salah Elsaharty indicating he presented with complaints of groin pain, located on hypogastric, which he first noticed seven months previous. Dr. Elsaharty diagnosed "Ileoinguinal[sic] nerve entrapment syndrome" and recommended an "ILN injection."

Both parties filed records from Wishard Health Services which are largely illegible. However, it appears Mohamed presented on April 8, 2011 complaining of bilateral groin/abdominal pain for approximately one year. No hernia was felt upon examination. Mohamed was referred to a surgeon, and it was noted a Spanish interpreter was needed.

On May 17, 2011, Mohamed was diagnosed with an inguinal hernia. A general surgical clinical evaluation was performed on June 7, 2011 for Mohamed's complaints of chronic pain in the bilateral inguinal areas. The treating physician assessed status post bilateral inguinal hernia repair with chronic ilioinguinal nerve tenderness and referred Mohamed to the pain clinic for an injection of Lidocaine. On June 29, 2011, Mohamed was diagnosed with possible bilateral ilioinguinal neuralgia status post inguinal hernia repair. On February 2, 2012, it was noted Mohamed was doing well following a nerve block, was prescribed Gabapentin and a Lidoderm patch. He was advised to follow up as needed. Mohamed was restricted to lifting over ten pounds for three months to prevent reoccurrence and exacerbation of the right inguinal pain due to neuritis.

Hometown filed the April 5, 2011 record of University Physician Associates indicating Mohamed complained of bilateral groin pain. An examination revealed no palpable hernia and indicated the pain was not reproducible. Mohamed was diagnosed with post inguinal hernia pain and exercise was recommended.

Mohamed filed Dr. Warren Bilkey's August 22, 2011 report. Dr. Bilkey diagnosed an abdominal wall strain/ groin strain, and bilateral inguinal hernias which were

repaired surgically, all due to the June 2, 2010 work injury. Despite the hernia repair, Dr. Bilkey noted Mohamed still experiences pain possibly due to a myofascial process. Dr. Bilkey found no evidence of a recurrent inguinal hernia. He found the treatment provided was reasonable, necessary and related to the work injury. He stated Mohamed had attained maximum medical improvement ("MMI"), noting a lack of evidence showing a need for additional surgery for a recurrent hernia. Dr. Bilkey recommended pain management, excluding injection procedures, and a home exercise program. He imposed restrictions precluding Mohamed from returning to his job at Hometown Buffet. Dr. Bilkey assigned a 3% impairment rating for chronic pain pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

Hometown Buffet submitted the July 14, 2011 report of Dr. Matthew Burton, of Cincinnati, Ohio. Dr. Burton opined the June 2, 2010 fall resulted in groin and lumbosacral strains, which subsequently resolved. Dr. Burton stated no evidence establishes the June 2010 fall onto the right side caused a bilateral inguinal hernia. He stated the bilateral inguinal hernias are due to a natural aging process not arising out of trauma from his work. Dr. Burton assigned a 3% impairment rating for chronic pain

pursuant to the AMA Guides if one accepts Mohamed has a bilateral inguinal hernia from a work-related injury, which he does not. Dr. Burton restricted Mohamed from lifting over fifty pounds due to his hernia repair surgery and noted he retains the physical capacity to return to his usual job. Dr. Burton noted no evidence of an inguinal hernia and disagreed with Wishard Memorial Hospital's recommendation. Dr. Burton declined to recommend further medical treatment, and stated any such recommendation is not reasonable, necessary, or related to the June 2010 slip and fall.

In an addendum dated February 29, 2012, Dr. Burton opined the work restriction of no lifting anything greater than ten pounds for a three month period recommended by physicians at Wishard Health Services is not necessary or reasonable since the medical records reflect the inguinal hernias have been repaired and are completely healed. Dr. Burton also found there is no evidence Mohamed has neuritis, and if there was, it would be unrelated to an inguinal hernia. Likewise, he opined the groin pain complaints are unrelated to Mohamed's past surgical history of inguinal hernia repair. In a March 6, 2012 addendum, Dr. Burton opined ilioguinal nerve injections are neither reasonable nor necessary since there is no evidence of ilioguinal nerve

entrapment and other causes of hypogastric pain have not been excluded.

Dr. Burton testified by deposition on March 27, 2012, and reiterated the opinions found in his IME report and two addendums. He opined bilateral inguinal hernias are usually the result of lifting heavy objects from floor to waist. Therefore, he opined the September 2010 hernia repair procedure was unrelated to the June 2010 fall. Dr. Burton testified Mohamed's hernias were pre-existing and were ultimately discovered following his fall at work.

Dr. Burton diagnosed a contusion injury and lumbar strain, which would have resolved in approximately three months. He stated patients typically experience residual groin pain for less than a year following a hernia surgery. Mohamed should not first experience groin pain over a year and half after his surgery. Dr. Burton testified nerve blocks are not reasonable, necessary or related to the work injury. He disagreed with the neurosis diagnosis, or that Mohamed's current pain is related to his past surgical repair. Dr. Burton emphasized the 3% impairment rating and fifty pound lifting restriction are unrelated to the June 2, 2010 fall.

On March 1, 2012, Mohamed filed a notice of unpaid medical expenses and attached a request for payment of

services or reimbursement for compensable expenses. The request listed: 1) a July 12, 2011 round trip taxi service to attend the IME of Dr. Burton; 2) a November 10, 2011 taxi to Wishard Hospital costing $590.00; and 3) a February 2, 2012 taxi to Wishard Hospital costing $590.00. Mohamed attached receipts associated with his travels to Wishard Hospital. After careful review of the record, we cannot locate a voucher or receipt for Mohamed's alleged taxi expenses to Dr. Burton's IME. In addition, in his brief to the ALJ, Mohamed did not specifically address reimbursement associated with expenses for a round trip taxi to attend Dr. Burton's IME. The claimed cost for the trip to the IME first appears in the November 17, 2012 opinion.

The September 7, 2012 benefit review conference order and memorandum identified the following contested issues: benefits per KRS 342.730, work-relatedness/ causation, average weekly wage, unpaid or contested medical expenses, injury as defined by the ACT, TTD, vocational rehabilitation and definition of injury.

In the November 17, 2012 opinion, the ALJ found Mohamed suffered a work-related injury on June 2, 2010, timely reported it and actively sought relief from his symptoms. He also found Mohamed attained MMI on August 22, 2011. The ALJ found the 3% impairment rating appropriate,

found the three multiplier applicable, and declined to award vocational rehabilitation benefits. Regarding the issue of contested and unpaid medical expenses, the ALJ found as follows:

> With regard to the issue of contested and unpaid medical expenses, the ALJ finds the opinion of Dr. Burton as contained in his letter of March 6, 2012 to be persuasive. The Plaintiff has removed himself to Columbus, Ohio. He was restricted from driving, so [sic] took a taxi cab to a July 12, 2012 appointment with Dr. Burton in Cincinnati at a claimed cost of $1,185.00[sic] round trip. Columbus and Cincinnati are both major metropolitan areas in Ohio with public transportation available at a cost much less than that of hiring a private taxi service if one cannot drive. That claim for reimbursement is unreasonable.
>
> The medical bills associated with the Plaintiff's pre-surgery hospitalization and post-surgery care at the University of Louisville Hospital are reasonable and necessary and should be paid.
>
> Medical expenses associated with post surgery pain are reasonable and necessary, but not those for iliolinguinal nerve blocks. The Plaintiff complained to Dr. Sahal[sic] Elsaharty of abdominal pain, which is not likely attributable to his hernia surgery of more than two years ago. Finally, of the records from Wishard Health Services that are legible and written in a readable hand, the ALJ is unable to discern a legitimate reason for yet another hernia operation and the expenses associated with Wishard

Health Services should be denied as not being reasonably calculated to contribute to the cure and relief of injuries sustained on June 2, 2010.

. . . .

FINDINGS OF FACT,
AND CONCLUSIONS OF LAW

. . . .

8. As stated by Plaintiff in his brief, there are unpaid or contested medical expenses. As to the taxi cab expense claimed for the expense of travelling from Columbus, Ohio to Cicinnati [sic], Ohio for a July 12, 2012 appointment with Dr. Burton, the ALJ finds that claim for reimbursement is unreasonable.

As to the medical bills associated with the Plaintiff's pre-surgery, hospitalization and post-surgery care at the University of Louisville Hospital the ALJ finds those claims to be for expenses directly related to the cure and relief of the effects of Plaintiff's work-related injury, and therefore reasonable and necessary and should be paid.

Medical expenses associated with post surgery pain are reasonable and necessary, but not those for iliolinguinal nerve blocks under the circumstances of this case. The Defendant/Employer should be relieved of the responsibility of paying for the charges incurred by Plaintiff for the services of Dr. Sahal[sic] Elsaharty.

Finally, the Defendant/Employer should be relieved of the responsibility of paying for the charges incurred by Plaintiff for the

> services of Wishard Health Services and its attendant staff as the ALJ is unable to discern a legitimate reason for yet another hernia operation as proposed. The expenses associated with Wishard Health Services should be denied as not being reasonably calculated to contribute to the cure and relief of injuries sustained on June 2, 2010.
>
> 9. As to future medical expenses, the Plaintiff should be entitled to the cost of reasonable and necessary treatment for the cure and relief of his work related injury.

The ALJ awarded TTD benefits, PPD benefits and medical benefits. In the award section, the ALJ stated as follows regarding the contested and unpaid medical expenses:

> 3. As to the taxi cab expense claimed for the expense of travelling from Columbus, Ohio to Cincinnati, Ohio for a July 12, 2012 appointment with Dr. Burton, the Defendant/Employer is hereby relieved of the responsibility of paying for the charges incurred by Plaintiff in the sum of $1,885.00.
>
> 4. The Defendant/Employer shall pay the medical bills associated with the Plaintiff's pre-surgery hospitalization and post-surgery care at the University of Louisville Hospital, the ALJ having found those claims to be for expenses directly related to the cure and relief of the effects of Plaintiff's work-related injury, and therefore reasonable and necessary.
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> 5. The Defendant/Employer is hereby relieved of the responsibility of paying for the charges incurred by

> Plaintiff for the services of Dr. Sahal[sic] Elsaharty.
>
> 6. The Defendant/Employer is hereby relieved of the responsibility of paying for the charges incurred by Plaintiff for the services of Wishard Health Services and its attendant staff, the ALJ having found that the expenses associated with Wishard Health Services are not being reasonably calculated to contribute to the cure and relief of injuries sustained on June 2, 2010.

Mohamed filed a petition for reconsideration making the same arguments he now asserts on appeal. In the December 27, 2012 order denying his petition, the ALJ stated as follows:

> This matter is before the undersigned on Plaintiff's Petition for Reconsideration as to the expenses incurred by him in hiring a taxi-cab to transport him from Columbus, Ohio to Cincinnati, Ohio and back for an IME with Dr. Burton at a cost of $1,885.00. In the Opinion, Award & Order of November 17, 2012 as amended, the ALJ specifically found the claim to be unreasonable. The ALJ's finding was based on the fact that the Plaintiff made no effort to determine whether there were other public transportation services that were available to the Plaintiff at a reasonable cost. Plaintiff chose not to seek a reasonably priced fare.
>
> Plaintiff now argues that if he is not entitled to reimbursement for his taxi expense, he should be entitled to reimbursement of travel expenses based upon the mileage to and from the IME

> pursuant to KRS 342.205 (2). The problem with that argument is that at the time of the IME he had been medically restricted from driving an automobile. The statute authorizes the payment of mileage only if one's "own vehicle" is used. Thus, an award under KRS 342.205 (2) would require the ALJ to speculate as to what a reasonable expense would be based upon existing tariffs and fares for public transportation that are not in evidence. Therefore, it does not appear that with regard to the issue of reasonableness of the fees for public transportation there are errors patently appearing on the face of the Opinion, Award & Order as amended.

In the May 6, 2013 order denying his petition for reconsideration, the ALJ stated as follows:

> This matter is before the undersigned on Plaintiff's Petition for Reconsideration as to the expenses incurred by him with Wishard Health Services generally.
>
> At pages 17 and 19 of the Opinion, Award & Order of November 17, 2012, the ALJ made a finding of fact that expenses associated with Wishard Health Services should be denied as not being reasonably calculated to contribute to the cure and relief of injuries sustained on June 2, 2010. As set out on page 17, part of the problem with the Wishard claim was the poor quality of the documents introduced into the record and part had to do with a lack of information as to causation or work relatedness of the bilateral hernia repair. Further, bilateral hernia repair had been successfully performed in 2010. Without being certified as the Plaintiff's treating physician(s) or requesting precertification, Wishard proposed to do yet another bilateral

> hernia repair on July 26, 2011. In the opinion of the ALJ there was insufficient evidence in the record to prove that the proposed surgery was either work-related or medically necessary/reasonable.
>
> This proposed procedure was the subject of a Form 112 Medical Dispute filed by the Defendant on August 5, 2011 and considered as an overall component of Mr. Ouldsidirijal's claim. The Form 112 was supported by the July 12 IME of Dr. Matthew Burton, M.D., in which Dr. Burton, after a thorough records review and physical examination of the claimant opined that the second bilateral hernia repair proposed by Wishard Health Services was not reasonable, necessary or related treatment for the effects of the June 2, 2010 work injury.
>
> If the ALJ had not made the factual determination that the Plaintiff had failed to introduce evidence sufficient to support an award of the disputed medical expenses, then the opinion of Dr. Burton would be persuasive with regard to the proposed procedure.
>
> Therefore, it does not appear that with regard to the issue of the fees from Wishard Health Services that there are errors patently appearing on the face of the Opinion, Award & Order as amended.

On appeal, Mohamed argues pursuant to KRS 342.205(2), he is at a minimum entitled to the mileage at the state mileage rate as reimbursement for his taxi expenses incurred to attend the IME of Dr. Burton requested by Hometown Buffet. Mohamed asserts Hometown Buffet did not

make arrangements to provide the cost of the examination, did not proffer a check, did not make a determination if he was going to use his own vehicle and did not inquire whether he in fact decided to drive to the IME. Further, Hometown Buffet did not proffer mileage at the state mileage rate after receiving Mohamed's request for payment pursuant to the taxi bill rendered for service. Mohamed also argues the ALJ erred as a matter of law in finding the expenses associated with Wishard Health Services not reasonable and necessary.

As the claimant in a workers' compensation case, Mohamed bore the burden of proving each of the essential elements of his cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). In addition, the burden of proof regarding medical expenses is statutorily prescribed by KRS 342.735(3) which provides in relevant part "[T]he employee has the burden of proof to show the medical expenses are related to injury, reasonable and necessary prior to an application the benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer." Since Mohamed was unsuccessful in proving his entitlement to reimbursement for taxi expenses and the medical expenses associated with Wishard Health Services were work-related or medically necessary/

reasonable, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to

reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

We find the evidence does not compel a finding the medical expenses associated with Wishard Health Services are work-related, reasonable or necessary for the cure and relief of injuries sustained on June 2, 2010. Dr. Burton's July 14, 2011 report alone constitutes substantial evidence to support the ALJ's determination. In his report, Dr. Burton stated as follows:

> Based on my examination, I do not find any evidence of any inguinal hernia and I would disagree with Rishard [sic] Memorial Hospital's recommendation for surgery since I cannot detect any hernia in the inguinal canal and he has already had bilateral inguinal hernia repair surgery.
>
> No other medical treatment is necessary or reasonable for the complaints of bilateral groin pain. He should simply continue with exercises he has learned in physical therapy for his back, utilize acetaminophen over-the-counter-medications for discomfort in the groin. . . .
>
> Any treatment currently rendered to Mr. Ouldsidirijal regarding bilateral groin pain is not reasonable nor necessary and not related to the slip and fall at work, June 2, 2010.

In addition, it was well within the ALJ's prerogative to judge the quality of the medical records provided by the parties. In this instance, the ALJ noted the records from

Wishard Health Services are mostly handwritten and illegible, are of poor quality and lack information as to causation or work-relatedness of the bilateral hernia repair. The ALJ acted well within his discretion in so finding as only he has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, supra.

However, we vacate and remand regarding the issue of reimbursement for travel expenses from Columbus to Cincinnati, Ohio expended by Mohamed to attend an IME requested by Hometown Buffet. KRS 342.205(2) states as follows:

> (2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his or her own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.

As a matter of law, the above statute entitles a claimant to some form of reimbursement in attending an IME requested by an employer. We note the statute is silent regarding whether a claimant is required to seek out the least expensive form of transportation, or whether failure to do so disqualifies him or her from any form of reimbursement in traveling to an IME as suggested by the ALJ in his November 2012 opinion. Clearly, the statute entitles Mohamed to some form of reimbursement for attending the evaluation. KRS 342.205 also **requires** prepayment of travel expenses for travel to IMEs, which Hometown Buffet neglected to do. We disagree with the ALJ's narrow interpretation that the statute authorizes the payment of mileage **only** if one's "own vehicle" is used. (emphasis added). A review of the statute does not reveal the use of the word "only."

On remand, the ALJ must determine the reasonable expenses to which Mohamed is entitled to for attending the evaluation in Cincinnati, Ohio at Hometown Buffet's request.

Accordingly, the November 17, 2012 opinion, and the December 27, 2012 and May 6, 2013 orders on reconsideration by Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED IN PART** and **VACATED IN PART.**

This claim is **REMANDED** for entry of an amended decision and award regarding reimbursement for travel expenses to the IME requested by the employer.

ALL CONCUR.

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