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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kevin W Glass,

10 Plaintiff,

11 v.

12 AsicNorth Incorporated,

13 Defendant.  
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No. CV-18-00898-PHX-DLR

**ORDER**

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16 At the termination of a case brought under the Americans with Disabilities Act  
17 (“ADA”), an award of attorneys’ fees to the defendant “should be permitted not routinely,  
18 not simply because [the defendant] succeeds, but only where the action brought is found to  
19 be unreasonable, frivolous, meritless<sup>1</sup> or vexatious.” *Christiansburg Garment Co. v.*  
20 *EEOC*, 434 U.S. 412, 421 (1978) (citation and internal quotations omitted). Defendant  
21 moves for an award of attorneys’ fees, asserting that Plaintiff’s suit was merely “part of a  
22 pattern by Plaintiff of asserting ADA claims against employers and instituting litigation  
23 that is determined to be without legal basis” and noting that Plaintiff failed to submit  
24 admissible evidence that he was disabled or that the performance-based reason given for  
25 his termination was pretextual. (Doc. 59 at 3, 5.) The Court has considered the briefs  
26 (Docs. 59, 64, 67) and concludes no exceptional circumstance justifying an award of  
27 attorneys’ fees to Defendant is present here.

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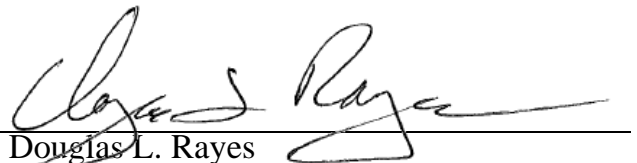
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<sup>1</sup> Meritless, in this context, is defined as “groundless or without foundation, rather than simply that the plaintiff has ultimately lost his case.” *Christiansburg*, 434 U.S. at 421.

1 First, the Court is unconvinced that Plaintiff's earlier ADA suits against one prior  
2 employer, which failed on the merits, reveal a pattern of bad faith and groundless  
3 litigation.<sup>2</sup> Second, Plaintiff's failure to submit admissible evidence that he was disabled  
4 during the relevant period does not mean that his case was frivolous or meritless. In his  
5 surreply, Plaintiff submitted medical reports supporting the existence of carpal tunnel, but  
6 the Court did not consider the new evidence because Plaintiff had not previously disclosed  
7 it in discovery. (Doc. 57 at 1.) The Court cannot conclude that his claim was meritless or  
8 frivolous. Third, Plaintiff's inability to show that the reason for his termination was  
9 pretextual does not render his claim unreasonable, frivolous, meritless, or vexatious.  
10 Again, a defendant's success on the merits does not equate with a plaintiff's claim wholly  
11 lacking merit. Accordingly,

12 **IT IS ORDERED** that Defendant's motion for attorneys' fees (Doc. 59) is  
13 **DENIED.**

14 Dated this 15th day of April, 2020.

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18 Douglas L. Rayes  
19 United States District Judge  
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27 <sup>2</sup> With that said, Plaintiff now has experience bringing several ADA suits. If in the  
28 future Plaintiff decides to bring another case based on an alleged disability, he should be  
prepared to demonstrate that he is, in fact, disabled (something he has not done here or in  
his previous cases).